

# **LAWS**

OF THE

## **STATE OF DELAWARE,**

TO THE YEAR OF OUR LORD, ONE THOUSAND EIGHT HUNDRED AND TWENTY  
NINE INCLUSIVE : TO WHICH ARE PREFIXED THE DECLARATION  
OF INDEPENDENCE AND CONSTITUTION OF  
THE UNITED STATES.

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**REVISED EDITION.**

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ARRANGED AND PUBLISHED UNDER THE AUTHORITY

OF THE

### **GENERAL ASSEMBLY.**

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ERRATA.

Page 463—*Title*—erase the words *Religious Societies*.

Page 539—on the top in bracket—erase *Lancaster* and substitute *Elkton*.

Page 732—erase this line, *power of two commissioners* 552, and insert the same in page 734, as the third line.

## PREFACE.

IN the year 1797, an edition of the Laws of this State was published in two volumes (1376 pages,) comprising the Acts of Assembly to that year *inclusive*. The Acts of the subsequent years to 1805 *inclusive*, were bound in a third volume of 399 pages; and the Acts of the following years to January Session 1813 *inclusive*, were bound in a fourth volume of 671 pages. A fifth volume of 437 pages, and a sixth volume of 763 pages have since been bound; and 496 pages of a seventh volume have been published. A part of the sixth volume and a great portion of the seventh volume consist of Acts passed in the course of revising Acts contained in the preceding volumes.

Soon after the binding of the fourth volume, the General Assembly directed their attention to the state of the Acts of Assembly. These had become intricate. The law in force was to be gathered from a mass, a great part of which was obsolete or had been repealed or altered. On many subjects, it required great diligence and care to search out the law, and skill to distinguish what was in force from what had been annulled, varied or supplied. It was seen, that every year would increase this evil.

The original design of the General Assembly was to procure a Digest of the Acts of Assembly. The plan of this Digest was understood to be—that the Acts should be arranged under proper heads; the language pruned of redundancy; and all parts not in force omitted; so as to compress the laws into the least practicable space, retaining the useful and avoiding all useless matter. Upon examining this subject, with a view to execute the intention of the General Assembly, it was seen, that a part of this plan (to wit pruning the language,) must be relinquished. The enacting clauses, *unless declarative*, not entering into the construction, could without detriment be omitted; but unless the very language of the provisions were retained, the book would be of no authority and unsafe. Departing therefore from this part of the plan and proceeding upon the residue, a Digest was prepared, and at the session of 1824 was reported to the General Assembly, for publication.

There was however in this Digest, a great and essential defect. The Acts of Assembly commenced in the year 1700: and there had never been an entire revision of the law on any subject. The manner of legislation had been,—to frame an Act supposed to contain the proper provisions. If experience discovered a deficiency, or change in circumstances required an alteration, whatever was wanted, was supplied by supplemental provisions. In this manner, several supplementary Acts on some subjects were passed in succession. The law upon a subject, thus consisting of an original Act and several supplements, was on many points a matter

of construction ; and to determine it a careful comparison of all the Acts was necessary. In this state of the Acts, a Digest could only have modified the evil. To remove this, one plain measure presented itself. This was, to revise the law upon the subjects, on which difficulty existed, and, repealing the Acts occasioning the embarrassment, incorporate in a revised Act the provisions proper to be retained with other provisions requisite to supply any defects. Upon this measure, the General Assembly in 1824 determined ; and in execution of it several Acts were passed at the sessions in 1825, 1826, 1827 and 1829. In the last session, this preparatory measure having been completed, "an Act directing a new edition of the laws" was passed ; and in pursuance of this Act the present edition has been published.

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The object of the General Assembly, that this edition shall contain the law, as it stands in force upon our Acts of Assembly, has been carefully observed. Sections amended have been published, as amended. Acts and clauses not in force have been omitted, unless the publication has been rendered necessary by connexion with other matter, and then the law, as it stands, has been stated or directly referred to : the instances are few ; the matter is plain. Sections as well as clauses, not in force, have been omitted entirely, without any notice : the numbers of such sections not being inserted. But the sections in force retain their original numbers : thus an Act consists of sections 2, 3, 5, 7, 12—(pa. 104, 105) ; the other sections not being in force. So of others.

The omission of the enacting clauses, *unless declarative*, is in conformity to the original intention. These clauses, *when declarative*, have been invariably retained ; in no other case could the retaining of them answer any useful purpose. In respect to this point, advice was received, upon which it was deemed perfectly safe to rely.

Under the title *Banks*, besides public Acts, are inserted certain statements, in pursuance of the provision in this particular of the Act directing this edition. The statements are included in brackets.

Several private Acts contain clauses imposing penalties. These clauses are required, by the Act directing this edition, to be published. They are collected under a Title (pa. 425—430, and pa. 639.) In relation to some of these, it has been thought best to make explanatory statements : every such statement is included in brackets.

Many of the provisions of the Acts incorporating Turnpike Companies, are strictly of a private nature. Other provisions of these Acts are of general concern and require publication. These Acts appear to have been drafted, one from another or from the same original ; so that the law for one company may be applied to others ; most of the companies being under the same law substantially, although there is an Act for each. In consequence, this provision—"if there be in different Acts a clause substantially

## PREFACE.

v

*the same proper to be published, it need not be published in relation to each Act, but may be connected with each Act by a statement," of the Act directing this edition—has been followed under the Title, Turnpikes (pa. 520—540.) The statements thus made, are included in brackets or parenthesis.*

The Acts in PART II., which begins 565, are local. Of some of these Acts, and of particular sections or clauses of others, a summary is published instead of the words. The sections or clauses, of which a summary is given, are included in brackets.

In this part, under the TITLE *Bridge*, are special provisions concerning particular bridges. Under the TITLE *Bridges* are two special Acts concerning travelling over certain bridges in New-Castle county. Under the TITLES—*Roads in New-Castle county, Roads in Kent county, Roads in Kent and Sussex, Roads in Sussex county*,—are special provisions concerning particular roads in these counties,—for laying out, altering, vacating, or erecting gates in such roads. The general law in respect to roads and bridges, (whether it regulates the charges, the laying out, the repairing, &c. either throughout the State or in particular counties) is in PART I, under the TITLE, *ROADS AND BRIDGES*.

WILLARD HALL.

Nov. 10, 1829.

## TABLE OF TITLES.

[The marginal notes are numbered for the sake of reference; the numbers commencing with each Title. The numbers included in parenthesis or brackets in the margin refer to these numbers: when number only is included, the reference is to that number of the marginal notes under the same Title; when the reference is to another Title, the Title as well as the number is included in the parenthesis or brackets.]

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# DECLARATION OF INDEPENDENCE.

*In Congress, July 4, 1776.*

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES  
OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Propriety of  
the Declaration.

We hold these truths to be self-evident—that all men are created equal, that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

Unalienable  
rights of the  
People, &c.

Absolute ty-  
ranny the ob-  
ject of the  
king of Great  
Britain.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation, in the legis-

Recitation of  
injuries and  
usurpations  
on the part of  
the British  
crown.



## DECLARATION OF

Recitation of  
injuries and  
usurpations  
on the part of  
the British  
crown.

lature—a right inestimable to them, and formidable to tyrants only. He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign merce-

naries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Petition for redress unavailing, &c.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

Appeal to the British people, fruitless, &c.

We, therefore, the representatives of the United States of America, in general congress assembled; appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies, are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the State of Great Britain, is, and ought to be, totally dissolved; and that as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

Declaration of independence.

The colonies absolve themselves from their allegiance, &c.

Mutual pledge of fidelity.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:

JOHN HANCOCK,

NEW HAMPSHIRE.

MASSACHUSETTS BAY.

*Josiah Bartlett,  
William Whipple,  
Matthew Thornton,*

*Samuel Adams,  
John Adams,  
Robert Treat Paine,*

# CONSTITUTION OF THE

*Elbridge Gerry.*

**RHODE ISLAND, &C.**

*Stephen Hopkins,  
William Ellery.*

**CONNECTICUT.**

*Roger Sherman,  
Samuel Huntington,  
William Williams,  
Oliver Wolcott.*

**NEW YORK.**

*William Floyd,  
Philip Livingston,  
Francis Lewis,  
Lewis Morris.*

**NEW JERSEY.**

*Richard Stockton,  
John Witherspoon,  
Francis Hopkinson,  
John Hart,  
Abraham Clark.*

**PENNSYLVANIA.**

*Robert Morris,  
Benjamin Rush,  
Benjamin Franklin,  
John Morton,  
George Clymer,  
James Smith,  
George Taylor,  
James Wilson,  
George Ross.*

**DELAWARE.**

*Cesar Rodney,  
George Read,  
Thomas M<sup>r</sup> Kean.*

**MARYLAND.**

*Samuel Chase,  
William Paca,  
Thomas Stone,  
Charles Carroll, of Carrollton,*

**VIRGINIA.**

*George Wythe,  
Richard Henry Lee,  
Thomas Jefferson,  
Benjamin Harrison,  
Thomas Nelson, jr.  
Francis Lightfoot Lee,  
Carter Braxton.*

**NORTH CAROLINA,**

*William Hooper,  
Joseph Hewes,  
John Penn.*

**SOUTH CAROLINA.**

*Edward Rutledge,  
Thomas Heyward, jr.  
Thomas Lynch, jr.  
Arthur Middleton.*

**GEORGIA.**

*Button Gwinnett,  
Lyman Hall,  
George Walton.*

## THE CONSTITUTION OF THE UNITED STATES,

WITH ALL THE RATIFIED AMENDMENTS, AS AT PRESENT EXISTING.

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

## ARTICLE I.

1  
Legislature.

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

Congress

Sect. 2. The house of representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

3  
House of Representatives

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

4  
members  
(25)

Representatives and direct taxes shall be apportioned among the several States which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

5  
apportionment.

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

6  
vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

7  
Officers  
8 impeachment  
9 Senate

Sect. 3. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years; and each senator shall have one vote.

(57)

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

10  
classes

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

11  
members

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

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

14 trial of impeachments. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

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

16 Elections of Senators and Representatives. Sect. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

(3) (9) 17 Meeting of Congress. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

18 powers of Houses. Sect. 5. Each house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

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

19 Journals 20 yeas and nays. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

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

22 compensation 23 privileges. Sect. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

24 Exclusion of members from offices. 25 Disqualification to be members. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

UNITED STATES.

7

Sect. 7. All bills for raising revenue shall originate in the house of representatives ; but the senate may propose or concur with amendments as on other bills.

26  
Revenue  
Bills.

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

27  
Negative of  
the President

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

Sect. 8. The Congress shall have power—

To lay and collect taxes, duties, imposts and excises :

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

28  
Powers of  
Congress

To borrow money on the credit of the United States :

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes :

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

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

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

To establish post offices and post roads :

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

To constitute tribunals inferior to the supreme court :

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

## CONSTITUTION OF THE

To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :

To provide and maintain a navy :

To make rules for the government and regulation of the land and naval forces :

To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions :

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States—reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :

29  
Seat of Gov-  
ernment.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings:—and,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

30  
Restrictions  
on Congress.

Sect. 9. The migration or importation of such persons as any of the States, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder, or ex post facto law, shall be passed.

No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another ; nor shall vessels bound to, or from one State, be obliged to enter, clear, or pay duties in another.

31  
Public  
money

No money shall be drawn from the treasury, but in consequence of appropriations made by law : and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States : and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign State.

32  
Restrictions  
on the States

Sect. 10. No State shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a

tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

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

ARTICLE II.

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

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

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.]

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

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

33  
Executive  
34  
President &  
Vice Presi-  
dent.  
35  
Electors.

This para-  
graph has  
been annul-  
led and sup-  
plied [74]

36  
Choosing  
Electors  
and their  
voting.

37  
President's  
qualifications  
same of  
Vice Presi-  
dent. (75)



## CONSTITUTION OF THE

33  
Vacancy. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

39  
Compensation. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation :

40  
Oath. " I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

41  
Powers. Sect. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

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

Sect. 3. He shall, from time to time, give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

42  
Impeachments. Sect. 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

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

Sect. 2. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

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

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

Sect. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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

ARTICLE IV.

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

Sect. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

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

43  
Judiciary.  
44  
Courts.  
45  
Judges.

46  
Jurisdiction. (73)

47  
Original & appellate.

48  
Jury trial. (67, 68, 69.)

49  
Treason

50  
Credit by States to public acts of each other.

51  
Citizenship.

52  
Fugitives from justice.

## CONSTITUTION OF THE

53  
from labour.

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

54  
New States.

Sect. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

55  
Territories.

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

56  
Guarantee of Republican government.

Sect. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

## ARTICLE V.

57  
Amendments

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the senate.

## ARTICLE VI.

58  
Prior debts.

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

59  
Supreme law

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

60  
Oath of office

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

61  
No religious test.

## ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same. 62 Ratification

Done in convention, by the unanimous consent of the States present, the 17th day of September, in the year of our Lord 1787, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, President,

And deputy from Virginia.

## NEW HAMPSHIRE.

*John Langdon,*  
*Nicholas Gilman.*

## MASSACHUSETTS.

*Nathaniel Gorham,*  
*Rufus King.*

## CONNECTICUT.

*William Samuel Johnson,*  
*Roger Sherman.*

## NEW YORK.

*Alexander Hamilton.*

## NEW JERSEY.

*William Livingston,*  
*David Brearly,*  
*William Patterson,*  
*Jonathan Dayton.*

## PENNSYLVANIA.

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

## DELAWARE.

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

## MARYLAND.

*James M<sup>c</sup>Henry,*  
*Daniel of St. Thomas Jenifer,*  
*Daniel Carroll.*

## VIRGINIA.

*John Blair.*  
*James Madison, jun.*

## NORTH CAROLINA.

*William Blount,*  
*Richard Dobbs Spaight,*  
*Hugh Williamson.*

## SOUTH CAROLINA.

*John Rutledge,*  
*Charles Coatesworth Pinckney,*  
*Charles Pinckney,*  
*Pierce Butler.*

## GEORGIA.

*William Few,*  
*Abraham Baldwin.*

Attest.

WILLIAM JACKSON, Secretary.

## AMENDMENTS TO THE CONSTITUTION OF THE

## ARTICLE I.

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

## ARTICLE II.

64 Militia. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

## ARTICLE III.

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

## ARTICLE IV.

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

## ARTICLE V.

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

## ARTICLE VI.

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

## ARTICLE VII.

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

## ARTICLE VIII.

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

## ARTICLE IX.

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

71  
Rights re-  
tained.

## ARTICLE X.

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

72  
Reserved  
powers.

## ARTICLE XI.

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

73  
State not su-  
able.

## ARTICLE XII.

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

74  
Election of  
President &  
V. President.

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

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

75  
Qualification  
of V. Pres't.

THE  
CONSTITUTION  
OF THE  
*State of Delaware.*

WE, THE PEOPLE, HEREBY ORDAIN AND ESTABLISH THIS CONSTITUTION OF GOVERNMENT FOR THE STATE OF DELAWARE.

<sup>1</sup>  
Essential  
rights.

<sup>2</sup>  
political  
power.

Reserved  
rights.  
(20)

<sup>3</sup>  
Religious Li-  
berty.

<sup>4</sup>  
Elections.  
<sup>5</sup> Jury trial.

<sup>6</sup>  
The press.

<sup>7</sup>  
Warrants of  
search  
or arrest

THROUGH divine goodness, all men have by nature, the rights of worshipping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and in general of attaining objects suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, for the due exercise thereof, power is inherent in them; and therefore all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness: and they may for this end, as circumstances require, from time to time alter their constitution of Government.

ARTICLE I.

Section 1. Although it is the duty of all men frequently to assemble together for the public worship of the Author of the universe; and piety and morality, on which the prosperity of communities depends, are thereby promoted; yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship.

Sect. 2. No religious test shall be required as a qualification to any office, or public trust, under this State.

Sect. 3. All elections shall be free and equal.

Sect. 4. Trial by jury shall be as heretofore.

Sect. 5. The press shall be free to every citizen, who undertakes to examine the official conduct of men acting in a public capacity; and any citizen may print on any subject, being responsible for the abuse of that liberty. In prosecutions for publications, investigating the proceedings of officers, or where the matter published is proper for public information, the truth thereof may be given in evidence: and in all indictments for libels the jury may determine the facts and the law, as in other cases.

Sect. 6. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as particularly as may be; nor then, unless there be probable cause supported by oath, or affirmation.

Sect. 7. In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to be plainly and fully informed of the nature and cause of the accusation against him, to meet the witnesses in their examination face to face, to have compulsory process in due time, on application by himself, his friends or counsel, for obtaining witnesses in his favor, and a speedy and public trial by an impartial jury : he shall not be compelled to give evidence against himself nor shall be deprived of life, liberty, or property, unless by the judgment of his peers or the law of the land.

8  
Rights of accused

Sect. 8. No person shall for any indictable offence be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger : and no person shall be for the same offence twice put in jeopardy of life or limb ; nor shall any man's property be taken or applied to public use without the consent of his representatives, and without compensation being made.

Sect. 9. All courts shall be open ; and every man for an injury done him in his reputation, person, moveable or immoveable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause, and the law of the land, without sale, denial, or unreasonable delay or expense ; and every action shall be tried in the county in which it shall be commenced, unless when the judges of the court in which the cause is to be tried, shall determine that an impartial trial therefore cannot be had in that county. Suits may be brought against the State, according to such regulations as shall be made by law.

9  
Administration of justice

Suits against the State

Sect. 10. No power of suspending laws shall be exercised, but by authority of the Legislature.

10  
Suspending laws.

Sect. 11. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted : and in the construction of gaols, a proper regard shall be had to the health of prisoners.

11 Bail, punishments  
gaols,

Sect. 12. All prisoners shall be bailable by sufficient sureties, unless for capital offences when the proof is positive or the presumption great ; and when persons are confined on accusation for such offences, their friends and counsel may at proper seasons have access to them.

12  
privileges of prisoners.

Sect. 13. The privilege of the writ of *Habeas Corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

13  
*Habeas Corpus*.

Sect. 14. No commission of oyer and terminer or gaol delivery, shall be issued.

14  
Oyer & Terminer.

Sect. 15. No attainder shall work corruption of blood, nor except during the life of the offender, forfeiture of estate. The estates of those who destroy their own lives shall descend or vest as in case of natural death, and if any person be killed by accident, no forfeiture shall be thereby incurred.

15  
Attainder, suicide, decendant.

Sect. 16. Although disobedience to laws by a part of the people, upon suggestions of impolicy or injustice in them, tends by immediate effect and the influence of example, not only to endan-

16  
Right to petition.



ger the public welfare and safety, but also in governments of a republican form, contravenes the social principles of such governments founded on common consent for common good; yet the citizens have a right in an orderly manner to meet together, and to apply to persons intrusted with the powers of government, for redress of grievances or other proper purposes, by petition, remonstrance, or address.

17  
Military

Sect. 17. No standing army shall be kept up without the consent of the Legislature: and the military shall, in all cases and at all times, be in strict subordination to the civil power.

18  
Quartering  
soldiers

Sect. 18. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, but by a civil magistrate, in a manner to be prescribed by law.

19  
Titles and  
offices

Sect. 19. No hereditary distinction shall be granted, nor any office created or exercised, the appointment to which shall be for a longer term than during good behaviour; and no person holding any office under this State, shall accept of any office or title of any kind whatever, from any King, Prince, or foreign State.

20  
Reservation

WE DECLARE THAT EVERY THING IN THIS ARTICLE IS RESERVED OUT OF THE GENERAL POWERS OF GOVERNMENT HEREIN-AFTER MENTIONED,

21  
Legislature

## ARTICLE II.

22  
General As-  
sembly

Sect. 1. The legislative power of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

23  
Representa-  
tives

Sect. 2. The Representatives shall be chosen annually by the citizens residing in the several counties respectively, on the first Tuesday of October.

24  
qualifications  
(38)

No person shall be a representative who shall not have attained to the age of twenty-four years, and have a freehold in the county in which he shall be chosen, have been a citizen and inhabitant of the State three years next preceding the first meeting of the Legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States or of this State.

25  
number

There shall be seven Representatives chosen in each county, until a greater number of Representatives shall by the General Assembly be judged necessary; and then, two thirds of each branch of the Legislature concurring, they may by law make provision for increasing their number.

26  
Senators

Sect. 3. The Senators shall be chosen for three years by the citizens residing in the several counties respectively, having right to vote for Representatives, at the same time when they shall vote for Representatives, in the same manner, and at the same places.

27 qualifica-  
tions (38)

No person shall be a Senator who shall not have attained to the age of twenty-seven years, and have in the county in which he shall be chosen, a freehold estate in two hundred acres of land, or an estate in real and personal property, or in either, of the value of one thousand pounds at least, and have been a citizen and in-

inhabitant of the State three years next preceding the first meeting of the Legislature after his election, and the last year of that term an inhabitant of the county in which he shall be chosen, unless he shall have been absent on the public business of the United States or of this State.

There shall be three Senators chosen in each county. When a greater number of Senators shall by the General Assembly be judged necessary, two thirds of each branch concurring, they may by law make provision for increasing their number ; but the number of Senators shall never be greater than one half, nor less than one third of the number of Representatives.

Immediately after the Senators shall be assembled in consequence of the first election, the Senators residing in each county shall be divided by lot into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year ; of the second class at the expiration of the second year ; and of the third class at the expiration of the third year ; so that one third may be chosen every year.

Sect. 4. The General Assembly shall meet on the first Tuesday of January in every year, unless sooner convened by the Governor.

Sect. 5. Each House shall choose its Speaker and other officers ; and also each House, whose Speaker shall exercise the office of Governor, may choose a Speaker *pro tempore*.

Sect. 6. Each House shall judge of the elections, returns, and qualifications of its own members ; and a majority of each shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, in such manner, and under such penalties, as shall be deemed expedient.

Sect. 7. Each House may determine the rules of its proceedings, punish any of its members for disorderly behavior, and with the concurrence of two thirds, expel a member, and shall have all other powers necessary for a branch of the Legislature of a free and independent State.

Sect. 8. Each House shall keep a journal of its proceedings, and publish them immediately after every session, except such parts as may require secrecy ; and the yeas and nays of the members on any question shall, at the desire of any member, be entered on the journal.

Sect. 9. The doors of each House, and of committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

Sect. 10. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sect. 11. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the State ; but, no law varying the compensation shall take effect, till an election of Representatives shall have intervened. They shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and

28  
numbers

29  
classes

30  
Annual meeting

31  
Each House, officers

32  
powers  
quorum

33  
punishing

34  
journals

35  
open doors

36  
adjournment

37  
Compensation and privileges

## CONSTITUTION OF THE

returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

38  
Exclusion of  
members  
from offices.  
Disqualifica-  
tions to be  
members

Sect. 12. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this State, which shall have been created, or the emoluments of which shall have been increased during such time. No person concerned in any army or navy contract, no member of congress, nor any person holding any office under this State or the United States, except the Attorney General, officers usually appointed by the courts of justice respectively, attorneys at law and officers in the militia, holding no disqualifying office, shall during his continuance in Congress or in office be a Senator or Representative.

39  
Vacancies

Sect. 13. When vacancies happen in either House, writs of election shall be issued by the Speakers respectively, or in cases of necessity, in such other manner as shall be provided for by law; and the persons thereupon chosen shall hold their seats as long as those in whose stead they are elected might have done, if such vacancies had not happened.

40  
Revenue  
bills

Sect. 14. All bills for raising revenue shall originate in the House of Representatives; but, the Senate may propose alterations as on other bills; and no bill, from the operation of which when passed into a law revenue may incidentally arise, shall be accounted a bill for raising revenue; nor shall any matter or clause whatever, not immediately relating to and necessary for raising revenue, be in any manner blended with or annexed to a bill for raising revenue.

41  
Public  
money

Sect. 15. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

42  
Executive

## ARTICLE III.

43  
Governor

Sect. 1. The supreme executive powers of the State shall be vested in a Governor.

44  
election

Sect. 2. The Governor shall be chosen on the first Tuesday of October, by the citizens of the State having a right to vote for Representatives, in the counties where they respectively reside, at the places where they shall vote for Representatives.

45  
election  
returns

The returns of every election for Governor shall be sealed up, and immediately delivered by the returning officers of the several counties, to the Speaker of the Senate, or in case of his death, to the Speaker of the House of Representatives, who shall keep the same until a Speaker of the Senate shall be appointed, to whom they shall be immediately delivered after his appointment, who shall open and publish the same in the presence of the members of both Houses of the Legislature. Duplicates of the said returns shall also be immediately lodged with the Prothonotary of each county. The person having the highest number of votes shall be Governor: but, if two or more shall be equal in the highest number of votes, the members of the two Houses shall, by joint ballot, choose one of

them to be Governor; and if, upon such ballot, two or more of them shall still be equal and highest in votes, the Speaker of the Senate shall have an additional casting vote.

Contested elections of a Governor shall be determined by a joint committee, consisting of one third of all the members of each branch of the Legislature, to be selected by ballot of the Houses respectively: every person of the committee shall take an oath or affirmation, that in determining the said election, he will faithfully discharge the trust reposed in him; and the committee shall always sit with open doors.

Sect. 3. The Governor shall hold his office during three years from the third Tuesday of January next ensuing his election; and shall not be capable of holding it longer than three in any term of six years.

Sect. 4. He shall be at least thirty years of age, and have been a citizen and inhabitant of the United States twelve years next before the first meeting of the Legislature after his election, and the last six of that term an inhabitant of this State, unless he shall have been absent on the public business of the United States or of this State.

Sect. 5. No member of Congress, nor person holding any office under the United States or this State, shall exercise the office of Governor.

Sect. 6. The Governor shall, at stated times, receive for his services an adequate salary to be fixed by law, which shall be neither increased nor diminished during the period for which he shall have been elected.

Sect. 7. He shall be Commander in Chief of the army and navy of this State, and of the militia; except when they shall be called into the service of the United States.

Sect. 8. He shall appoint all officers whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for; but no person shall be appointed to an office within a county, who shall not have a right to vote for Representatives, and have been an inhabitant therein one year next before his appointment, nor hold the office longer than he continues to reside in the county. No member of Congress, nor any person holding or exercising any office under the United States, shall at the same time hold or exercise the office of Judge, Treasurer, Attorney General, Secretary, Clerk of the Supreme Court, Prothonotary, Register for the probate of wills and granting letters of administration, Recorder, Sheriff, or any office under this State, with a salary by law annexed to it, or any other office which the Legislature shall declare incompatible with offices or appointments under the United States. No person shall hold more than one of the following offices at the same time, to wit, Treasurer, Attorney General, Clerk of the Supreme Court, Prothonotary, Register, or Sheriff. All commissions shall be in the name of the State, shall be sealed with the great seal, and be signed and tested by the Governor.

Sect. 9. He shall have power to remit fines and forfeitures; and to grant reprieves and pardons, except in cases of impeachment.

56  
information

Sect. 10. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices.

57  
Communica-  
tions to gen-  
eral assembly

Sect. 11. He shall from time to time give to the General Assembly information of affairs concerning the State and recommend to their consideration such measures as he shall judge expedient.

58  
Convening &  
adjourning  
General As-  
sembly

Sect. 12. He may on extraordinary occasions convene the General Assembly; and in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding three months.

59  
vacancy

Sect. 13. He shall take care that the laws be faithfully executed.

Sect. 14. On the death or resignation of the Governor, or his removal from office on impeachment, or for inability, the Speaker of the Senate at that time shall exercise the office of Governor, until a new Governor shall be duly qualified; and on the death or resignation of the Speaker of the Senate, the Speaker of the House of Representatives at that time shall exercise the office, until it be regularly vested in a new Governor. If the trial of a contested election shall continue longer than until the third Tuesday of January next ensuing the election of a Governor, the Governor of the last year, or the Speaker of the Senate, or of the House of Representatives, who may then be in the exercise of the executive authority, shall continue therein until a determination of such contested election. The Governor shall not be removed from his office for inability, but with the concurrence of two thirds of all the members of each branch of the Legislature.

60  
Secretary of  
State

Sect. 15. A Secretary shall be appointed and commissioned during the Governor's continuance in office, if he shall so long behave himself well. He shall keep a fair register of all the official acts and proceedings of the Governor, and shall when required by either branch of the Legislature, lay the same, and all papers, minutes, and vouchers, relative thereto, before them, and shall perform such other duties as shall be enjoined him by law. He shall have a compensation for his services to be fixed by law.

61  
Elections

#### ARTICLE IV.

62  
Voters

Sect. 1. All elections of Governor, Senators, and Representatives, shall be by ballot, and in such elections every white free man of the age of twenty one-years, having resided in the State two years next before the election, and within that time paid a State or county tax, which shall have been assessed at least six months before the election, shall enjoy the right of an elector; and the sons of persons so qualified, shall between the ages of twenty-one and twenty-two years, be entitled to vote, although they shall not have paid taxes.

privileges

Sect. 2. Electors shall in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from them.

#### ARTICLE V.

63  
Impeach-  
ments

Sect. 1. The House of Representatives shall have the sole power of impeaching: but two thirds of all the members must concur in

an impeachment. All impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to the evidence. No person shall be convicted without the concurrence of two thirds of all the Senators.

Sect. 2. The Governor, and all other civil officers under this State, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under this State; but the party convicted shall nevertheless be subject to indictment, trial, judgment and punishment according to law.

Sect. 3. Treason against this State shall consist only in levying war against it, or in adhering to the enemies of the government, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

## ARTICLE VI.

Sect. 1. The judicial power of this State shall be vested in a Court of Chancery, a Supreme Court, and Courts of Oyer and Terminer and General Gaol Delivery, in a Court of Common Pleas, and in an Orphans Court, Register's Court, and a Court of Quarter Sessions of the Peace for each county, in Justices of the Peace, and in such other courts as the Legislature, two thirds of all the members of each branch concurring, may from time to time establish.

Sect. 2. The Chancellor, and the Judges of the Supreme Court and of the Court of Common Pleas, shall hold their offices during good behavior; but for any reasonable cause which shall not be a sufficient ground for an impeachment, the Governor may in his discretion remove any of them, on the address of two thirds of all the members of each branch of the Legislature. They shall, at stated times, receive, for their services adequate salaries, to be fixed by law, which shall not be diminished during their continuance in office, and shall be payable quarterly to their respective orders upon the Treasurer, out of any moneys in the treasury; but they shall hold no other office of profit, nor receive any fees or perquisites, except such fees as shall be fixed by law for business to be done out of court.

Sect. 3. The Judges of the Supreme Court shall be not fewer than three nor more than four, one of whom shall be Chief Justice. There shall be a Judge residing in each county. The jurisdiction of this court shall extend over the State. The Judges shall, by virtue of their offices, be Justices of Oyer and Terminer and General Gaol Delivery in the several counties. Any two of the Judges may act as if all were present.

Sect. 4. The Judges of the Court of Common Pleas, shall be not fewer than three, nor more than four, one of whom shall be Chief Justice. There shall be a Judge residing in each county. The jurisdiction of this court shall extend over the State. Any two of the Judges may act as if all were present.

Sect. 5. The Chancellor, or any Judge of the Supreme Court, or

64  
Treasurer65  
JudiciaryCourts  
(73, 79)66  
Tenure of office of the  
Chancellor &  
Judges67  
Supreme  
CourtOyer and  
Terminer68  
Court of  
Common  
Pleas

69  
Habeas Cor-  
pus

of the Court of Common Pleas, shall issue the writ of *Habeas Corpus* in vacation time and out of term, when duly applied for, which shall be immediately obeyed.

70  
Acknow-  
ledgment of  
deeds

Sect. 6. Any Judge of the Supreme Court or of the Court of Common Pleas may, unless the Legislature shall otherwise provide by law, out of court, take the acknowledgment of deeds; and the same being thereon certified, under his hand, such deeds shall be recorded and have the same effect as if acknowledged in open court.

71  
Amending  
pleadings

Sect. 7. In civil causes when pending, the Supreme Court and Court of Common Pleas shall have the power before judgment, of directing upon such terms as they shall deem reasonable, amendments in pleadings and legal proceedings, so that by error in any of them, the determination of causes, according to their real merits, shall not be hindered; and also of directing the examination of witnesses that are aged, very infirm, or going out of the State, upon interrogatories *de bene esse*, to be read in evidence, in case of the death or departure of the witnesses before the trial, or inability by reason of age, sickness, bodily infirmity, or imprisonment, then to attend; and also the power of obtaining evidence from places not within the State.

72  
Depositions

Sect. 8. Suits may originate in the Supreme Court or Court of Common Pleas.

74  
One judge

Sect. 9. One Judge of the Supreme Court or of the Court of Common Pleas may, if the other Judges come not, open and adjourn the court, and may also make the necessary rules preparatory respectively to the trial or argument of causes.

75  
Money into  
court

Sect. 10. At any time pending an action for debt or damages, the defendant may bring into court a sum of money for discharging the same and the costs then accrued, and the plaintiff not accepting thereof, it shall be delivered for his use to the Clerk or Prothonotary of the court; and if, upon the final decision of the cause, the plaintiff shall not recover a greater sum than that so paid into court for him, he shall not recover any costs accruing after such payment, except where the plaintiff is an executor or administrator.

76  
Suits survive  
(Joint ac-  
tions. 1.)

Sect. 11. By the death of any party, no suit in chancery or at law, where the cause of action survives, shall abate, but, until the Legislature shall otherwise provide, suggestion of such death being entered of record, the executor or administrator of a deceased petitioner or plaintiff may prosecute the said suit; and if a respondent or defendant dies, the executor or administrator being duly served with a *Seire Facias*, thirty days before the return thereof, shall be considered as a party to the suit, in the same manner as if he had voluntarily made himself a party; and in any of those cases, the court shall pass a decree, or render judgment, for or against executors or administrators, as to right appertains. But where an executor or administrator of a deceased respondent or defendant becomes a party, the court, upon motion, shall grant such a continuance of the cause as to the judges shall appear proper.

77  
Security on  
appeal and  
error

Sect. 12. Whenever a person, not being an executor or administrator, appeals from a decree of the Chancellor or applies for a

writ of error, such appeal or writ shall be no stay of proceeding in the Chancery, or the Court to which the writ issues, unless the appellant or plaintiff in error shall give sufficient security, to be approved respectively by the Chancellor, or by a Judge of the Court from which the writ issues, that the appellant or plaintiff in error shall prosecute respectively his appeal or writ to effect, and pay the condemnation money and all costs, or otherwise abide the decree in appeal or the judgment in error, if he fail to make his plea good.

Sect. 13. No writ of error shall be brought upon any judgment heretofore confessed, entered or rendered, but within five years from this time; nor upon any judgment hereafter to be confessed, entered or rendered, but within five years after the confessing, entering, or rendering thereof; unless the person entitled to such writ be an infant, *feme covert*, *non compos mentis*, or a prisoner, and then within five years exclusive of the time of such disability. 78  
Limitation of  
writs of error

Sect. 14. The equity jurisdiction heretofore exercised by the Judges of the Court of Common Pleas, shall be separated from the common law jurisdiction, and vested in a Chancellor, who shall hold Courts of Chancery in the several counties of this State. In cases of equity jurisdiction, where the Chancellor is interested, the cognizance thereof shall belong to the Court of Common Pleas, with an appeal to the High Court of Errors and Appeals. 79  
Equity juris-  
diction.

[Sect. 15. *The Judges of the Court of Common Pleas, or any two of them, shall compose the Orphans Court of each county, and may exercise the equity jurisdiction heretofore exercised by the Orphans Courts, except as to the adjusting and settling Executors, Administrators and Guardians accounts; in which cases they shall have an appellate jurisdiction from the sentence or decree of the Register. This Court may issue process throughout the State, to compel the attendance of witnesses. Appeals may be made from the Orphans Court, in cases where that Court has original jurisdiction, to the Supreme Court, whose decision shall be final.*] This section  
has been an-  
nulled and  
supplied.  
(104)

Sect. 16. An Executor, Administrator, or Guardian, shall file every account with the Register for the county, who shall as soon as conveniently may be, carefully examine the particulars with the proofs thereof, in the presence of such Executor, Administrator or Guardian, and shall adjust and settle the same, according to the very right of the matter, and the law of the land; which account so settled, shall remain in his office for inspection; and the Executor, Administrator, or Guardian, shall within three months after such settlement, give due notice in writing to all persons entitled to shares of the estate, or to their Guardians respectively, if residing within the State, that the account is lodged in the said office for inspection; and the Judges of the Orphans Court shall hear the exceptions of any persons concerned, if any be made, and thereupon allow no demand whatever against the estate of the deceased, unless upon consideration of all circumstances, they shall be fully convinced that the same is therewith justly chargeable. 80  
Executor's,  
administra-  
tor's, & guar-  
dian ac-  
counts.

Sect. 17. The Registers of the several counties shall respectively hold the Register's Court in each county. Upon the litigation of 81  
Register's  
court.



69  
Habeas Cor-  
pus

of the Court of Common Pleas, shall issue the writ of *Habeas Corpus* in vacation time and out of term, when duly applied for, which shall be immediately obeyed.

70  
Acknow-  
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71  
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pleadings

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73  
Suits

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74  
One judge

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75  
Money into  
court

Sect. 10. At any time pending an action for debt or damages, the defendant may bring into court a sum of money for discharging the same and the costs then accrued, and the plaintiff not accepting thereof, it shall be delivered for his use to the Clerk or Prothonotary of the court; and if, upon the final decision of the cause, the plaintiff shall not recover a greater sum than that so paid into court for him, he shall not recover any costs accruing after such payment, except where the plaintiff is an executor or administrator.

76  
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77  
Security on  
appeal and  
error

Sect. 12. Whenever a person, not being an executor or administrator, appeals from a decree of the Chancellor or applies for a

writ of error, such appeal or writ shall be no stay of proceeding in the Chancery, or the Court to which the writ issues, unless the appellant or plaintiff in error shall give sufficient security, to be approved respectively by the Chancellor, or by a Judge of the Court from which the writ issues, that the appellant or plaintiff in error shall prosecute respectively his appeal or writ to effect, and pay the condemnation money and all costs, or otherwise abide the decree in appeal or the judgment in error, if he fail to make his plea good.

Sect. 13. No writ of error shall be brought upon any judgment heretofore confessed, entered or rendered, but within five years from this time; nor upon any judgment hereafter to be confessed, entered or rendered, but within five years after the confessing, entering, or rendering thereof; unless the person entitled to such writ be an infant, *feme covert*, *non compos mentis*, or a prisoner, and then within five years exclusive of the time of such disability. 78  
Limitation of  
writs of error

Sect. 14. The equity jurisdiction heretofore exercised by the Judges of the Court of Common Pleas, shall be separated from the common law jurisdiction, and vested in a Chancellor, who shall hold Courts of Chancery in the several counties of this State. In cases of equity jurisdiction, where the Chancellor is interested, the cognizance thereof shall belong to the Court of Common Pleas, with an appeal to the High Court of Errors and Appeals. 79  
Equity juris-  
diction.

[Sect. 15. *The Judges of the Court of Common Pleas, or any two of them, shall compose the Orphans Court of each county, and may exercise the equity jurisdiction heretofore exercised by the Orphans Courts, except as to the adjusting and settling Executors, Administrators and Guardians accounts; in which cases they shall have an appellate jurisdiction from the sentence or decree of the Register. This Court may issue process throughout the State, to compel the attendance of witnesses. Appeals may be made from the Orphans Court, in cases where that Court has original jurisdiction, to the Supreme Court, whose decision shall be final.*] This section  
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supplied.  
(104)

Sect. 16. An Executor, Administrator, or Guardian, shall file every account with the Register for the county, who shall as soon as conveniently may be, carefully examine the particulars with the proofs thereof, in the presence of such Executor, Administrator or Guardian, and shall adjust and settle the same, according to the very right of the matter, and the law of the land; which account so settled, shall remain in his office for inspection; and the Executor, Administrator, or Guardian, shall within three months after such settlement, give due notice in writing to all persons entitled to shares of the estate, or to their Guardians respectively, if residing within the State, that the account is lodged in the said office for inspection; and the Judges of the Orphans Court shall hear the exceptions of any persons concerned, if any be made, and thereupon allow no demand whatever against the estate of the deceased, unless upon consideration of all circumstances, they shall be fully convinced that the same is therewith justly chargeable. 80  
Executor's,  
administra-  
tor's, & guar-  
dian ac-  
counts.

Sect. 17. The Registers of the several counties shall respectively hold the Register's Court in each county. Upon the litigation of Exceptions.  
  
81  
Register's  
court.

a cause, the depositions of the witnesses examined, shall be taken at large in writing, and make part of the proceedings in the cause. This Court may issue process throughout the State, to compel the attendance of witnesses. Appeals may be made from a Register's Court to the Supreme Court, whose decisions shall be final. In cases where a Register is interested in questions concerning the probate of wills, the granting letters of Administration, or Executors, Administrators, or Guardians accounts, the cognizance thereof shall belong to the Orphans Court, with an appeal to the Supreme Court, whose decision shall be final.

82  
Prothonotaries & clerks.

83  
Lien of judgments.  
(Lien of judgments 1.)

84  
Court of quarter sessions.

85  
Justices of the peace.

a (Justices of the Peace, 1 2 3. 4)

86  
Style of process.

Sect. 18. The Prothonotaries of the Court of Common Pleas may issue process as heretofore, take recognizances of bail, and sign confessions of judgment; and the Clerks of the Supreme Court shall have the like powers. No judgment in the Supreme Court or Court of Common Pleas held for one county, shall bind lands or tenements in another, until a *Testatum Fieri Facias* being issued, shall be entered of record in the office of the Prothonotary of the county, wherein the lands or tenements are situated.

Sect. 19. The Judges of the Court of Common Pleas shall, by virtue of their offices, compose the Courts of General Quarter Sessions of the Peace and Gaol Delivery within the several counties. Any two of the said Judges shall be a quorum.

Sect. 20. The Governor shall appoint a competent number of persons to the office of Justice of the Peace, not exceeding twelve (a) in each county, until two thirds of both Houses of the Legislature shall by law direct an addition to the number, who shall be commissioned for seven years, if so long they shall behave themselves well, but may be removed by the Governor within that time on conviction of misbehaviour in office, or on the address of both Houses of the Legislature.

Sect. 21. The style in all process and public acts shall be, **THE STATE OF DELAWARE.** Prosecutions shall be carried on in the name of the State, and shall conclude *against the peace and dignity of the State.*

#### ARTICLE VII.

87  
High Court of errors and appeals.

Section 1. There shall be a Court, styled *The High Court of Errors and Appeals*, which shall consist of the Chancellor and of the Judges of the Supreme Court and Court of Common Pleas. Any four of the Judges of this Court may proceed on business; but any smaller number may open and adjourn the Court. If any of them has rendered judgment or passed a decree in any cause before removal, he shall not sit judicially upon the hearing of the same in this Court, but may assign the reasons upon which such judgment was rendered, or such decree passed. The Chancellor shall preside, except when he cannot sit judicially; and in such cases, or in his absence, the Chief Justice of the Supreme Court, but if he is so disqualified or absent, then the Chief Justice of the Court of Common Pleas shall preside; and if he is so disqualified or absent, then the next eldest Judge according to priority in date of commissions, if present, and not disqualified as aforesaid, shall preside.

This\* Court shall have power to issue writs of error to the Supreme Court, and to the Court of Common Pleas, and to receive and determine appeals from interlocutory or final orders or decrees of the Chancellor. Errors shall be assigned, and causes of appeal exhibited in writing speedily, and citations duly served on adverse parties.

Sect. 2. Upon the reversal of a judgment of the Supreme Court, or of the Court of Common Pleas, or a decree of the Chancellor, this Court shall respectively render such judgment, or pass such decree, as the Supreme Court, or the Court of Common Pleas, or the Chancellor ought to have rendered or passed, except where the reversal is in favour of the plaintiff, or petitioner in the original suit, and the damages to be assessed, or the matters to be decreed, are uncertain: In any of which cases, the cause shall be remanded, in order to a final decision.

Sect. 3. The Judges of this Court may issue all process proper for bringing records fully before them, and for carrying their determinations into execution.

#### ARTICLE VIII.

Section 1. The members of the Senate and House of Representatives, the Chancellor, the Judges of the Supreme Court, and the Court of Common Pleas, and the Attorney General, shall by virtue of their offices, be conservators of the peace throughout the State; and the Treasurer, Secretary, Clerks of the Supreme Court, Prothonotaries, Registers, Recordors, Sheriffs, and Coroners, shall, by virtue of their offices, be conservators thereof, within the counties respectively in which they reside.

Sect. 2. The Representative, and when there shall be more than one, the Representatives of the people of this State in Congress, shall be voted for at the same places where Representatives in the State Legislature are voted for, and in the same manner.

Sect. 3. The State Treasurer shall be appointed annually by the House of Representatives with the concurrence of the Senate. No person, who hath served in the office of State Treasurer, shall be eligible to a seat in either House of the Legislature, until he shall have made a final settlement of his accounts as Treasurer, and discharged the balance, if any thereon due.

Sect. 4. Two persons for the office of Sheriff and two for the office of Coroner, shall be chosen by the citizens residing in each county, and having right to vote for Representatives, at the time and places of election of Representatives, one of whom for each office respectively, shall be appointed by the Governor. They shall hold their offices for three years, if so long they shall behave themselves well, and until successors be duly qualified; but no person shall be twice appointed Sheriff, upon election by the citizens, in any term of six years. The Governor shall fill vacancies in these offices by new appointments to continue unto the next gene-

\* In the High Court of Errors and Appeals, it was adjudged, at June term, 1820, in the case John Lowber, Plaintiff in Error vs. The State, that this Court has power to award a writ of error to the Court of General Quarter Sessions of the Peace and Gaol Delivery; and in December 1823, in the case of the State vs. Bachelor, that this Court has power to award a writ of error to the Court of Oyer and Terminer and General Gaol Delivery.

ral election, and until successors shall be chosen and duly qualified. The Legislature, two thirds of each branch concurring, may when it shall be judged expedient, vest the appointment of Sheriffs and Coroners, in the Governor; but no person shall be twice appointed Sheriff in any term of six years.

92  
Tenure of  
certain offi-  
ces.

Sect. 5. The Attorney General, Clerks of the Supreme Court, Prothonotaries, Registers, Clerks of the Orphans Court and of the Peace, shall respectively be commissioned for five years, if so long they shall behave themselves well; but may be removed by the Governor within that time, on conviction of misbehaviour in office, or on the address of both Houses of the Legislature. Prothonotaries, Clerks of the Supreme Court, of the Orphans Courts, Registers, Recorders, and Sheriffs, shall keep their offices in the town or place in each county, in which the Supreme Court and the Court of Common Pleas are usually held.

93  
Appointment  
of inferior  
officers.

Sect. 6. Attornies at law, all inferior officers in the Treasury Department, election officers, officers relating to taxes, to the poor, and to high-ways, Constables and Hundred officers, shall be appointed in such manner as is or may be directed by law.

94  
Salaries and  
fees.

Sect. 7. All salaries and fees annexed to offices shall be moderate; and no officer shall receive any fees whatever, without giving to the person who pays, a receipt for them, if required, therein specifying every particular and the charge for it.

95 Receipt  
for fees.

96  
Costs in cri-  
minal cases,  
(costs in cri-  
minal cases.)

Sect. 8. No costs shall be paid by a person accused on a bill being returned ignoramus; nor on acquittal by a Jury, unless a majority of the Judges present at the trial certify, that there was probable cause for the prosecution.

97  
Rights of cor-  
porations.

Sect. 9. The rights, privileges, immunities, and estates of religious societies and corporate bodies, shall remain as if the Constitution of this State had not been altered. No Clergyman or Preacher of the Gospel, of any denomination, shall be capable of holding any civil office in this State, or of being a member of either branch of the Legislature, while he continues in the exercise of the pastoral or clerical functions.

98  
Exclusion of  
Clergy.

99  
Laws in force

Sect. 10. All the laws of this State, existing at the time of making this Constitution, and not inconsistent with it, shall remain in force, unless they shall be altered by future laws; and all actions and prosecutions now pending, shall proceed as if this Constitution had not been made.

Sect. 11. This Constitution shall be prefixed to every edition of the laws made by direction of the Legislature.

100  
Duties of Le-  
gisature

Sect. 12. The Legislature shall, as soon as conveniently may be, provide by law, for ascertaining what statutes, and parts of statutes shall continue to be in force within this State; for reducing them, and all acts of the General Assembly, into such order, and publishing them in such manner, that thereby the knowledge of them may be generally diffused; for choosing Inspectors and Judges of elections, and regulating the same in such manner, as shall most effectually guard the rights of the citizens entitled to vote; for better securing personal liberty, and easily and speedily redressing all wrongful restraints thereof; for more certainly obtaining returns of impartial Juries; for dividing lands and tenements in sales by Sher-

iffs, where they will bear a division, into as many parcels as may be without spoiling the whole, and for advertising and making the sales in such manner, and at such times, and places, as may render them most beneficial to all persons concerned; and for establishing schools, and promoting arts and sciences.

## ARTICLE IX.

Members of the General Assembly, and all officers, executive and judicial, shall be bound by oath or affirmation, to support the Constitution of this State, and to perform the duties of their respective offices with fidelity. 101  
Oath of office

## ARTICLE X.

The General Assembly, whenever two thirds of each House shall deem it necessary, may, with the approbation of the Governor, propose amendments to this constitution, and at least three, and not more than six months before the next General Election of Representatives, duly publish them in print, for the consideration of the people; and if three fourths of each branch of the Legislature shall, after such an election, and before another, ratify the said amendments, they shall be valid to all intents and purposes, as parts of this constitution. No Convention shall be called but by the authority of the people; and an unexceptionable mode of making their sense known, will be for them at a General Election of Representatives, to vote also by ballot *for* or *against* a Convention, as they shall severally choose to do; and if, thereupon, it shall appear, that a majority of all the citizens in the State having right to vote for Representatives, have voted for a Convention, the General Assembly shall accordingly at their next session call a Convention, to consist of at least as many members as there are in both Houses of the Legislature, to be chosen in the same manner, at the same places, and at the same time that Representatives are, by the citizens entitled to vote for Representatives, on due notice given for one month, and to meet within three months after they shall be elected. 102  
Amendments  
  
103  
Conventions

Done, in Convention, the Twelfth day of June, in the Year of our Lord One Thousand Seven Hundred and Ninety Two, and of the Independence of the United States of America, the Sixteenth. In testimony whereof, we have hereunto subscribed our names.

THOMAS MONTGOMERY, President.

*John Dickinson,  
Robert Armstrong,  
Edward Roche,  
William Johnson,  
Robert Haughey  
George Monro,  
Robert Coram,  
Kensey Johns,*

*Nicholas Ridgely,  
John Clayton,  
Thomas White,  
Manlove Emerson,  
James Morris,  
Richard Bassett,  
Benjamin Dill,  
Henry Moliston,*

*Andrew Barratt,  
Isaac Cooper,  
George Mitchell,  
John W. Batson,  
Rhoads Shankland,  
Isaac Beauchamp,  
Daniel Polk.*

(ATTEST.)

JAMES BOOTH, Secretary.

## AMENDMENT TO THE CONSTITUTION.

104 Orphans  
Court.

The Chancellor shall compose the Orphans Court of each County, and exercise the equity jurisdiction heretofore exercised by the Orphans Court, except as to the adjusting and settling Executors, Administrators and Guardians accounts, in which cases he shall have an appellate jurisdiction from the sentence and decree of the Register: This court may issue process throughout the State to compel the attendance of witnesses—Appeals may be made from the Orphans Court in cases where that Court has original jurisdiction to the Supreme Court, whose decision shall be final.

*Ratified February 5, 1892.*

**LAWS**  
**OF THE**  
***State of Delaware.***

**ACTS OF ASSEMBLY.**

**I.**

**AN ACT directing a new edition of the laws.**

1829.

Section 1. An edition of the laws of this State shall be published under the superintendence of Willard Hall.

In this edition, the laws shall be arranged under proper titles, <sup>1</sup> New edition of laws. 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. <sup>2</sup> Arrangement & contents. 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 be published, 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 heretofore 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.

*Passed at Dover, February 14, 1829.*

<sup>3</sup> No. of copies.

**II.**

**AN ACT declaring the effect of certain expressions in Acts of Assembly.**

1829.

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.*

<sup>4</sup> Rule of construction.



## ACTS OF ASSEMBLY.

## III.

1825. *AN ACT to provide for recording acts and resolutions of the General Assembly not of a public nature and for other purposes.*

- 5 Private Acts to be recorded. Section 1. Whenever any act or resolution shall be passed or adopted by the Legislature of this State, which shall not be of a public nature or printed or published as such, it shall and may be lawful for the person or persons, in whose favour such act or resolution shall pass or be adopted, to procure a copy of the same, attested by the Secretary of State under the seal of his office, to be recorded in the office for recording of deeds, in one of the counties of this State, within twelve months after the same shall pass or be adopted, as aforesaid, in a book provided for that purpose; and the record thereof, or a copy of the same under the hand of the Recorder and seal of his office, shall be evidence in all Courts of law or equity in this State: and every such act or resolution, not recorded within the time aforesaid, shall be void and of no effect.
- 6 within 12 months.
- 7 or void. Sect. 2. When any such act or resolution as aforesaid shall authorize any person or persons to bring into this State any negro or mulatto servant or slave, the person or persons, in whose favour such act or resolution shall pass or be adopted, shall at the time of procuring a copy of the same from the Secretary of the State, pay to the said Secretary, for the use of the State, the sum of ten dollars for each and every slave mentioned in said act or resolution.
- 8 \$10 payable on permission to bring in slave.
- Recorder's fees. Sect. 3. The Recorder shall be entitled to receive, for the aforesaid services, the same fees which are allowed by law for recording of deeds.

*Passed at Dover, January 27, 1825.*

## ALIENS.

## I.

1799. *AN ACT to confirm the title of lands heretofore purchased by Aliens, who have since become naturalized, and for other purposes.*

1. Purchases by aliens. All gifts, grants, bargains, sales, conveyances, and devises of any lands, tenements and hereditaments, within this State, heretofore made to any person or persons, who at the time of making the same was or were an alien or aliens, and have since been legally naturalized according to the laws of this State or of the United States, shall be good and effectual and shall be construed and taken to be good and effectual, to vest in the grantee or grantees, bargainee or bargainees, devisee or devisees, such estate and interest, and as good a right and title in and to the same, as he or they could have taken by the same gift, grant, bargain, sale, conveyance or devise, if he or they had been legally naturalized at the time of making the same, and all deeds and conveyances made of any lands, tenc-

ments, and hereditaments within this State, by any such alien or aliens, who hath or have since been legally naturalized as aforesaid, shall be as good and effectual, and shall be construed and taken to be as good and effectual, to vest in the grantee or grantees, bargainee or bargainees, devisee or devisees, such estate, and as good a right and title in and to the same lands, tenements or hereditaments, as such grantee, bargainee or devisee could have taken by the same, if the grantor, bargainor, or devisor, had been legally naturalized at the time of making such grant, bargain, sale, conveyance or devise, last mentioned.

<sup>2</sup> and conveyances of aliens

confirmed.

*Passed at Dover, January 16, 1799.*

## II.

### AN ACT concerning Aliens.

1829.

Section 1. 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.

<sup>3</sup> Capacity under circumstances to take, transfer and transmit real estate.

Sect. 2. 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.

<sup>4</sup> Retrospective

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.

<sup>5</sup> Purchases by or from

But no right vested in any person shall be divested or prejudiced by this section.

<sup>6</sup> vested rights saved.

Sect. 3. 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.

<sup>7</sup> Descent through alien, 3 Blac. com. 251.

Sect. 4. 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.

<sup>8</sup> Personal estate of intestate.  
<sup>1</sup> Johns, ch. Rep. 206-210

*Passed at Dover, January 26, 1829.*

## APPRENTICES AND SERVANTS.

## AN ACT concerning Apprentices and Servants.

1827.

1 Appren-  
tices & ser-  
vants.

Section 1. 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.

2 who can  
bind

Sect. 2. 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.

3 poor chil-  
dren.  
(41) (49)

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.

4 illegiti-  
mate child.

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 administering 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,

5 indemni-  
ty to county  
not affected

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.

6 Negro &  
mulatto chil-  
dren.

Sect. 3. 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.

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.

7 Duty of constable.

It shall also be the duty of every Trustee of the Poor knowing of any such child or children, to give information 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.

8 Trustees of the Poor.

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.

9 Not to be bound, if above 10 years old, and parents indemnify county.

Sect. 4. Such binding as aforesaid shall be by indenture or deed poll.

10 Binding indenture, or deed.

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 inquired 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.

11 How executed.

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.

12 Stipulations.

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.

13 consideration.

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. —

14 Note of Justice.

—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.

15 recorded  
(22, 30, 43.)

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 Recorder shall immediately record the said indenture or deed with the note or certificate of approval or other indorsement 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

16 Duty of Recorder.

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  
on Justice,  
Trustee or  
Recorder.

Sect. 5. If by such indenture or deed as aforesaid or by any indenture or deed executed pursuant 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 apprentice or servant bound as mentioned in this section, die leaving a widow; such apprentice or servant shall be transmitted to such 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.

17 Assignable  
when & how.

18 transmissible.

19 right of  
widow.

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.

20 condition  
of assignees,  
executors &  
administ'rs.

The presence and approbation of the Judge or Justices or Trust-

## APPRENTICES AND SERVANTS.

21 Certificate of approval of assignment.

22 recording (15)

23 Justices or Trustees, two acting, must be together.

24 No binding or assignment to a non-resident.

25 except

26 Rights of master.

27 Run-a-way

compensation.

28 Convicted and fined—

compensation to master paying fine.

tees, required by this section, must appear by some note or certificate under hand, in like manner as herein before prescribed in relation to the execution of the indenture or deed.

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.

Sect. 6. 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.

Sect. 7. 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 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.

Sect. 8. 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.

Sect. 9. 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. 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.

Sect. 10. 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.

29 Adjudication extending the term.

30 recorded (15)

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.

Sect. 11. 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 authorized 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 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

31 Penalty, on assigning to non-resident or removing from state.

32 except



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.

(crimes)  
33 Kidnap-  
ping.

Sect. 12. 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 misdemeanors," 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 servant 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.

34 Sale, &c.  
by master  
with intent to  
export and re-  
duce to slave-  
ry.

35 Run-a-way  
apprehending.

36 Justice.

37 Sheriff.

Sect. 13. 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-a-way 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.

38 Relief a-  
gainst master.

39 Supreme  
Court, Court  
of Com. Pleas,  
Judge or  
Chancellor.

Sect. 14. 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 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.

40 discretion of the Court or Judge.

41 further powers.

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.

42 Annuling 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.

43 recording (15)

Sect. 15. 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.

44 Binding or assignment not according to this act, void.

Sect. 16. 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

45 Dealing with, harbouring, decoying, &c. apprentice or servant.

or her master or mistress or shall conceal a run-a-way apprentice or servant or assist a run-a-way 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.

46 When not assignable or transmissible.

Sect. 17. 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.

48 The term "servant" restricted.

Sect. 18. 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.

49 A justice and trustee of the poor.  
(3)

Sect. 19. 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.

*Passed at Dover, February 5, 1827.*

## ASSIGNMENT OF BILLS AND SPECIALTIES.

### I.

Between 1726  
—1736.

### AN ACT for assigning *Bills and Specialties*.

For the encouragement of trade and commerce;

1 Bonds and notes assignable and indorsable.

Section 1. All bonds, specialties, and notes in writing, made, or to be made payable to any person or persons, his, her or their order or assigns, for any sum of money, may by the person or persons, to whom the same is or are made payable, be assigned, indorsed, or made over to any other person or persons, who will accept the same; and such assignee or indorsee, their executors, administra-

tors or assigns, may again, at their pleasure, assign, indorse, or make over the same bonds, specialties or notes, to any other, and so *toties quoties* as any person shall be willing to accept of the same.

2 Rights of assignee and indorsee.

Sect. 2. And such assignee or assignees, indorsee or indorsees, their executors or administrators, may in their own name or names sue for and recover the sums of money contained in any bonds, specialties or notes so assigned, indorsed, or made over, for his or their own use or uses, and at their own costs and charges, in like manner as the person or persons to whom the same were at first made payable, might or could have done.

3 Suits.

Sect. 3. *Provided always*, That all assignments to be made of any bonds or specialties, shall be under the hand and seal of the assigner, and at least before two credible witnesses; and that it shall not be in the power of the assigners or indorsers, their executors or administrators, to release or discharge any of the debts or sums of money due by the said bonds, specialties or notes, after the date of such assignment; and that no release, receipt, or discharge from the assigner, his executors or administrators, made after the date of such assignment, shall be available to the obliger, or the persons from whom the money was owing, his, her, or their executors or administrators.

4 Assignment of specialties.

5 Assigner, indorser no power to release, &c.

## II.

### A SUPPLEMENT to the act, entitled, "*An act for assigning Bills and Specialties.*" 1811.

Section 1. Where any person or persons now is or are or hereafter shall be bound in any bond, bill or obligation, or other writing, made or to be made payable to any person or persons, his, her or their executors, administrators, order or assigns for any sum of money, and the money or such part thereof as shall be unpaid by the principal debtor or debtors, or his, her or their executors or administrators, shall be paid or tendered by the surety or sureties, or his, her or their executors or administrators, the obligee or obligees, or his, her or their executors, administrators or assigns shall be obliged to assign such bond, bill, obligation or other writing to the surety or sureties, or his, her or their executors or administrators, paying or tendering the money due as aforesaid; and the assignee or assignees, or his, her or their executors and administrators, shall and may by virtue of such assignment, and this act, have an action in his, her or their own name or names upon the said bond, bill, obligation or other writing as aforesaid, against the principal debtor or debtors, or his, her or their executors or administrators. And where two or more persons now are or hereafter shall be bound together in any bond, bill, obligation or other writing as joint debtors, or as joint sureties, in any sum of money made payable to any person or persons, his, her or their executors, administrators, order or assigns, and such bond, bill, obligation or other writing shall be satisfied by one or more of such joint debtors or joint sureties, or his, her or their executors or administrators, it shall be lawful for the creditor or creditors, or his, her or their executors, administrators or assigns, and they

6 Assignment to surety.

7 to joint debtor

## ASSIGNMENT OF BILLS AND SPECIALTIES.

are hereby required and obliged to assign such bond, bill, obligation or other writing to the joint debtor or debtors, surety or sureties, or his, her or their executors or administrators, satisfying the same; and such assignee or assignees, and his, her or their executors or administrators shall be entitled unto, and have in his, her and their own name or names, as assignee or assignees, or executors or administrators, an action, and such process of execution, or otherwise, as the creditor himself might have had, upon said writing against the other joint debtor or joint debtors; surety or sureties, or his, her or their executors or administrators, and thereupon recover such proportion of the money so paid as may be justly due from the defendant or defendants.

8 Judgment assigned to surety.

Sect. 2. Where any person or persons hath or have recovered or shall recover or obtain any judgment against the principal debtor or debtors and surety and sureties or his, her or their executors or administrators; and such judgment hath been or shall be satisfied by such surety or sureties or his, her or their executors or administrators, the creditor or creditors or his, her or their executors, or administrators shall be obliged to assign such judgment to the surety or sureties, or his, her or their executors or administrators satisfying the same; and the assignee or assignees and his, her or their executors and administrators shall be entitled unto and have in his, her or their own (a) name or names as assignee or assignees or executors or administrators, the same process by execution or other process against the principal debtor or debtors by virtue of such assignment and this act, as the creditor or creditors might or ought to have had; the said assignment being first filed of record in the same court wherein the judgment shall have been rendered or obtained; and where any judgment hath been or shall be rendered against several debtors or sureties and one or more of them hath satisfied or shall satisfy the whole; the plaintiff or plaintiffs or creditors, or his, her or their executors or administrators or assigns shall be obliged to assign such judgment to the debtor or debtors, surety or sureties, or his, her or their executors or administrators satisfying the same; and the assignee or assignees, or his or her or their executors or administrators shall have and be entitled to an (b) execution, or other process against the other debtor or debtors, surety or sureties, or his, her or their executors or administrators, against whom judgment has been or shall be obtained by the principal creditor or his, her or their executors or administrators or assigns for a proportionable part of the debt or damages paid by such assignee or assignees, or his, her or their executors or administrators, any law, usage or custom to the contrary notwithstanding: *Provided always*, that no defendant or defendants shall be precluded or debarred of his, her or their remedy against the plaintiff or plaintiffs or his, her or their executors or administrators or assigns, by any legal or equitable course of proceeding whatsoever, any thing in this act to the contrary notwithstanding.

a (21)

9 proceeding (16)

10 joint debt- or joint surety

11 proceeding b (16) (21)

12 Other remedy.

13 Form of assignment.

Sect. 3. All assignments to be made under the provisions of this act, shall be under the hand and seal of the assignor or assignors, and at least before two credible witnesses; and that it shall not be in the power of the assignor or assignors, or his, her or their heirs, execu-

tors or administrators, to release or discharge any of the debts or sums of money so satisfied, after such assignment, and that no such release, receipt or discharge, made after such assignment, shall be available to the obligor or obligors or the person or persons from whom the money was owing as debtor or debtors, or surety or sureties as aforesaid, or his, her or their or any of their heirs, executors or administrators : *Provided nevertheless*, that no assignment made agreeably to the provisions of this act shall be deemed and taken to make the assignor or assignors, or his, her or their heirs, executors or administrators, liable to the assignee or assignees, in case such assignee or assignees shall not receive or recover the debt or sum due as aforesaid, nor shall such assignor or assignors in any manner be responsible for the same.

14 effect.  
15 assignor not liable.

Sect. 4. *Provided always nevertheless*, That before any assignee or assignees, or his, her or their executors or administrators, as aforesaid, shall proceed in manner aforesaid, such assignee or assignees, or his, her or their executors or administrators, shall file with the Clerk of the Court in which the proceedings are to be instituted, or before the Justices of the Peace where the proceedings are instituted, a true account, showing the sum due from the defendant or defendants, and to which shall be annexed an affidavit made before some Judge or Justice of the Peace, that he, she or they doth or do believe the said sum remains wholly unpaid.

16 Before proceeding account and affidavit.

*Passed at Dover, January 24, 1811.*

### III.

#### AN ACT for the relief of Special Bail.

1829.

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. (a)

17 Assignment of judgment to bail.

18 at his risk

19 when

20 proceeding

21 extended

a (16)

*Passed at Dover, February 11, 1829.*

## I.

## 1770. AN ACT directing the manner of suing out Attachments within this Government.

1 Attachment Section 2. No writ of attachment shall issue out of any Court with-  
 vs. residenter. in this government for any sum to the amount of forty shillings and  
 (a) one (22) upwards against a residenter in the government, until [two (a)] *non*  
*est inventus*'s are successively returned by the Sheriff or Coroner,  
 upon two writs taken out against him, and such proof made of the  
 cause of action as the court shall think fit; or until the person or  
 persons requesting such writ of attachment, or some other credible  
 person for him, her or them, shall upon oath or affirmation de-  
 clare, that the said defendant is justly indebted to the plaintiff in  
 the sum of forty shillings and upwards, and absconded from the  
 place of his or her usual abode, or is gone out of the government  
 with an intent to deceive and defraud his or her creditors, as it is  
 believed; which oath or affirmation may be administered by the  
 officer that grants the writ, or by any Judge of the court out of  
 which it may issue, and shall be filed in the court to which such  
 attachment is returnable; whereupon a writ of attachment shall  
 be granted, directed to the Sheriff or Coroner, as the case may re-  
 quire, commanding him to attach the defendant or defendants by  
 all his, her, or their goods and chattels, rights and credits, lands  
 and tenements, in whose hands or possession soever the same may be  
 found in his bailiwick or county, so that he, she or they, be and  
 appear at the next Court of Common Pleas, to be held, &c. to an-  
 swer, &c. and that he summon the garnishee or garnishees to ap-  
 pear at the court to which the said writ is returnable, then and  
 there to declare what goods, chattels or effects, he, she, or they,  
 hath or have in his, her or their hands.

2 Service of be served by the Sheriff, or other officer of the proper county, as  
 the writ. the case may require, who shall attach all the lands and tenements,  
 goods and chattels, rights and credits of the defendant that he can  
 find, and take into his hands all the said goods and chattels, rights  
 and credits, and cause the same to be appraised and inventoried,  
 and be answerable for the same; but if he cannot come at the  
 actual possession of such goods and chattels, rights and credits,  
 he shall go to the person or persons in whose hands or possession  
 the same are supposed to be lodged, and there declare, that he at-  
 tachoeth all the goods and chattels, rights and credits of the defend-  
 ant in his, her or their hands, at the suit of the plaintiff, for the  
 use of the creditors of the defendant, and that he doth summon the  
 garnishee or garnishees to appear at the next court to which the  
 said writ is returnable, to declare on oath or affirmation, what  
 goods, chattels or effects he, she or they hath or have in his, her  
 or their hands or possession, belonging to the defendant; from  
 and after which declaration, the goods, chattels or effects, so at-  
 tached, shall be delivered to the Sheriff and be by him secured for  
 the use of the creditors, unless the garnishee or garnishees will  
 give security for the same; but if the defendant or defendants in  
 3 dissolved, the attachment, or some sufficient person or persons for him, her

or them, will, at any time before judgment be entered, put in special bail to the plaintiff's action and to all other actions that his, her or their creditor or creditors shall enter against him, her or them, to the value of the lands and tenements, goods and chattels, rights and credits of the defendant so attached, and the costs of suit, then the garnishees and the lands, goods, chattels and effects of the defendant, shall thereupon be immediately discharged.

Sect. 4. No second writ of attachment shall issue against a residenter out of any court within this government, unless the first attachment shall happen not to be executed, or otherwise shall be dissolved by the court, or discontinued by the plaintiff, with the consent of the majority of the defendant's creditors, and if the person or persons in whose name or names any such writ of attachment may be taken out against a residenter shall happen to die before a final end of the proceedings thereon, the same shall not abate by reason of such dying, but it shall and may be lawful for the court to order a suggestion of the death of such plaintiff or plaintiffs to be entered of record, and substitute the name of any other of the creditors, consenting thereto, in his or their stead. 4 no second writ.

Sect. 5. The Sheriff or Coroner, as the case may require, shall return into court a particular account, as well of all the lands and tenements, as of the goods, chattels and effects, rights and credits of the defendant by him attached, and the appraised value of the goods, chattels and effects, together with the name or names of such person or persons as he shall summon as garnishee or garnishees, and if any of the goods, chattels or effects, so attached, are of a perishable nature, or such as will create any expense in the keeping of them, the court, or in the vacation, [three (b) Justices of the Court of Common Pleas] of the county, may and shall order the said officer, after reasonable public notice given, to sell them and retain the money in his hands, or deliver the same into court there to remain, until judgment shall be obtained against the defendant in the attachment. 5 return.

Sect. 6. If the garnishee or garnishees, summoned as aforesaid, shall fail or neglect to appear and declare upon oath or affirmation what goods, chattels or effects, rights or credits, of the defendant, he, she or they had in his, her or their hands, custody or possession, at the time of the attachment laid, or at any time after, an attachment or attachments of contempt shall issue out of the said court against such garnishee or garnishees to compel him, her or them to appear: and if the garnishee or garnishees do appear, and at the request of the plaintiff, or any other creditor, shall declare on his, her or their oath or affirmation, that he, she or they, had no money, goods, chattels, rights, credits or effects, of the defendant in his, her or their hands, custody or possession, at the time of the attachment laid, or at any time after, then such garnishee or garnishees shall be discharged; but if the plaintiff in the attachment, or any other creditor or creditors of the defendant, shall require the garnishee or garnishees to plead that he, she or they had no money, goods, chattels, rights, credits or effects, of the defendant in his, her or their hands, custody or possession, at the time of laying the attachment, or at any time after, then such garnishee or garnishees shall not be admitted to make oath or affirm- 6 order for sale of perishable, &c. goods (b) one judge (23)

7 Garnishee's default,

oath.

plea



trial ation as aforesaid, but shall be obliged to plead such plea, and the plaintiff, or any other creditor or creditors as aforesaid, may take issue thereon and proceed to trial. And if it shall appear to the jury on the trial of such issue, that the garnishee or garnishees had any money, goods, chattels and effects, of the defendant in his, her, or their hands, custody or possession, they shall find a verdict for the plaintiff, or such other creditor or creditors, and assess damages to the value of such money, goods, chattels and effects, with costs of suit; whereupon judgment shall be entered against the garnishee or garnishees, and the plaintiff, or such other creditor or creditors, shall at his, her or their election have an execution against such garnishee or garnishees, his, her or their bodies, goods and chattels, lands and tenements, as for his, her or their proper debt or debts; and the money levied thereon, shall be distributed among all the creditors of the defendant, in manner and form as is herein after directed.

8 Garnishee  
not a resident

or about to  
leave.

Sect. 7. *And whereas* it frequently happens, that the persons or garnishees in whose hands the defendant's goods, chattels or effects are attached reside in another county or government, or are likely to depart this government, or remove out of the county where the attachment is served, and the plaintiff loses the benefit of his writ; for remedying which inconveniency:— If any plaintiff in any writ of attachment prosecuted within this government as aforesaid, or any creditor claiming any benefit by or under such writ of attachment, shall, upon oath or affirmation declare, that the garnishee is not an inhabitant of this government, or of the county where the attachment is depending; or in case the garnishee is an inhabitant, that he or she verily believes such garnishee is about to depart this government, or the county where such attachment is depending; and that he or she does also believe that such garnishee hath some of the defendant's goods, chattels or effects in his or her hands or possession, or is indebted to the defendant in any sum of money, although the same shall happen at that time not to be due, then and in such case, it shall and may be lawful for the plaintiff or creditor to take a writ against the said garnishee or garnishees, and oblige him, her or them, to find sureties to appear at court, and make answer as by this act is required, and further to abide the judgment of the court.

9 Auditors  
appointed.

Sect. 8. The Justices of the respective courts to which the said writ of attachment is returnable, as soon as the officer hath returned the same, shall and may and are hereby authorized, empowered and required, to nominate and appoint three honest and discreet freeholders of the county to audit the accounts of all the defendant's creditors [except such of them as have taken out warrants of attachment from any Justice of the Peace within this government for debts under forty shillings, and caused the goods and chattels of the defendant to be attached thereby, who are utterly barred and excluded hereby from claiming or receiving any benefit by virtue of this act] and to adjust and ascertain the demands, as well of the plaintiff or plaintiffs in the attachment, as of all the rest of such creditors of the defendant, and make a true and just report of their proceedings therein to the said Justices at the court next after such appointment, who shall have power to control and cor-

rect any errors that shall appear to them in such report, either in the allowance of any debts or demands against the defendant, which by law ought not to be allowed, or in the calculations of the dividends to be made of the defendant's estate and effects amongst the creditors, or otherwise howsoever.

Sect. 9. The Auditors after such appointment shall give notice to the creditors of the times and places of their meeting by affixing advertisements at the Court House, and other public places in the respective county, at least thirty days before such time; and all and every creditor and creditors neglecting or refusing to attend in person, or by attorney, according to such notice, and then and there to make proof of his, her or their debt or debts or other demands, in manner as by this act is directed, shall be debarred from receiving any share or dividend on the distribution herein after specified. And, for the avoiding of frauds;—The Auditors so to be appointed shall and may examine upon oath or affirmation, or by any other ways or means as to them shall seem meet, all or any of the creditors of the defendant for the finding out and discovery of the truth and certainty of the several debts due and owing to such creditor or creditors.

10 Proceed-  
ings of Audi-  
tors, (13)

11 Their pow-  
er to exam-  
ine.

Sect. 10. Judgment shall be given for the plaintiff in the attachment the [third (e)] court after issuing of the writ unless the defendant shall enter special bail as aforesaid; whereupon the Justices of the court shall immediately make an order of court for the Sheriff; to proceed to the sale of the defendant's goods and chattels, lands and tenements, in such manner and form as is directed by the laws of this government in other cases, and to deliver the money arising upon such sales [all costs and charges being first deducted] into the hands of the Auditors aforesaid, who on the receipt thereof are hereby required and directed to calculate and settle the shares, proportions and dividends, due to the several creditors of the defendant [except as before excepted] and to distribute and pay to the said creditors, their executors, administrators or assigns respectively, their rateable or proportionable parts of the said money, according to the quantity of their respective debts, allowing to the person or persons, suing out such writ of attachment, and prosecuting the same to condemnation and distribution, a double share, proportion and dividend of the said money, so as the same do not exceed his, her or their debt.

12 Judgment  
second.  
(24)

dividends.

Sect. 11. Every Auditor to be appointed as aforesaid, shall, before he enter upon the execution of his office, take an oath or affirmation in open court, or before any Justice of the Peace of the respective county, that he will well and faithfully discharge his duty in the said office according to the best of his skill and knowledge.

13 Oath of  
Auditors.

Sect. 12. All sales of the goods and chattels, lands and tenements of the defendant in any attachment, to be made pursuant to this act, shall be good and available in law against the said defendant, his heirs, executors and assigns; and if any action shall be brought against any officer, or other person having any power or authority to do or perform any matter by virtue of this act, he may plead the general issue and give this act in evidence in his justification.

14 Sales,

Sect. 13. That the overplus of the defendant's or debtor's estate

15 overplus

[if any be] remaining after all his, her or their debts, and the lawful costs and charges are paid and deducted, be returned to such defendant or defendants, his, her or their executors, administrators or assigns.

16 Balances of debts not satisfied.

Sect. 14. If the creditor or creditors of any such debtor or defendant be not fully satisfied, or otherwise contented, for his, her or their debts and duties by the ways and means before specified and declared, then the said creditor or creditors, and every of them, shall and may have their remedy for the recovery and levying of the residue of their said debts or duties against the debtor or debtors in the like manner and form as they should and might have had before the making of this act; and the said creditor or creditors and every of them shall be only barred and excluded by virtue of this act of and for every such part and portion of the said debts and duties as shall be paid, satisfied, distributed or delivered unto him, her or them, by order of the Auditors aforesaid, and of no more portion or parcel thereof, any thing herein specified that may be taken or construed to the contrary notwithstanding.

17 Sureties.

Sect. 15. All and every person or persons, who are or shall become surety or sureties for the debt or debts of any person or persons absenting themselves, or residing out of this government as aforesaid, either by recognizance, bond, bill, assumption or otherwise, and shall make proof thereof in manner aforesaid to the satisfaction of the Auditors to be appointed as aforesaid, shall come in for an equal or distributive share or shares of the estate of such person or persons with the rest of his, her or their creditors, in like manner as if the debts for which such surety or sureties are or shall be bound as aforesaid were originally due to them, except as before is excepted.

18 Writ *us, non-resident,*

*d* [this oath is altered, 25]

Sect. 16. No writ of attachment shall issue out of any court within this government, for any sum to the amount of forty shillings and upwards, against persons residing out of this government, until one *non est inventus* is returned by the Sheriff or Coroner upon a writ taken out against such non-resident, and delivered to such Sheriff or Coroner at least ten days before the return thereof, and such proof made of the cause of action as the court shall think fit, or until the person or persons requesting the said writ of attachment, or some other credible person for him, her or them, shall upon oath or affirmation declare, that the said defendant is justly indebted to the plaintiff in the sum of [*forty (d) shillings*] and upwards, [*and (d) avoids coming into this government lest he or she be taken to answer his or her just debts,*] as it is believed, which oath or affirmation shall and may be taken and filed in the manner as is herein before directed in the case of residents; whereupon a writ of attachment shall be granted to each and every such person requiring the same, directed to the Sheriff or Coroner, as the case may require, and shall be by him executed, and like proceedings had against the defendant and defendants therein, and the garnishees summoned thereon, as herein before is also directed, without the subsequent steps of appointing Auditors and making distribution; but every plaintiff in an attachment against a non-resident shall have the benefit of his own discovery, and after judgment had, the court shall award execution to be made by, *fieri fa-*

*cias. cupias ad satisfaciendum*, or otherwise, as on other judgments.

Sect. 17. Before any creditor or creditors shall receive his, her or their dividend or proportionable share of the debtor's estate he, she or they shall be obliged to enter into a recognizance to the debtor or debtors, with surety or sureties, before the Prothonotary of the court where such judgment shall be obtained, that if such debtor or debtors shall within a year and a day next following come into court either in person or by attorney, and disprove or avoid his, her or their debt, or debts, or any part thereof, that then he, she or they will make restitution of the said money by him, her or them received, or of so much thereof as shall be disproved; and for each recognizance eighteen-pence shall be paid, and no more. Which said attachments, judgments or executions may be pleaded by, and shall be a sufficient bar for, the garnishees in any action brought by the said defendants against them for the same.

19 Creditors before receiving dividend, to give security.

Sect. 18. It shall and may be lawful for any person or persons, obtaining or having obtained judgment in any Court of Record, to take out an attachment thereon, as well as any other execution, in which attachment there shall be an order of summons, and the same proceeded on as above directed, without the previous or subsequent steps of one or two *non ests*, oath or affirmation, appointing Auditors, making distribution, or finding security as above; and the said attachment, condemnation or judgment thereon, shall be pleadable in bar by the garnishee as aforesaid, in any action against him at the instance of the defendant.

20 Attachment instead of other execution.

Sect. 20. *And whereas* it often happens, that persons, who are indebted in considerable sums of money to the inhabitants of this government, remove themselves and their effects out of the same before the days of payment of their said debts, and the creditors, without all relief, except in a course of equity, which is both tedious and expensive; for the remedying which evil, and the better to secure the inhabitants of this government against such dishonest practices:—If any person be indebted to an inhabitant of this government in any sum of money exceeding forty shillings, and the day of payment is not then come, and the creditor, or some credible person for him or her, will, on oath or affirmation, declare, that the defendant or debtor is indebted to him or her in a sum of money exceeding forty shillings, and that the day of payment is not then come, and that such deponent or affirmant doth verily believe upon good grounds that the debtor is about to depart this government, and to remove his or her effects, and that such debtor hath refused to give better security for the payment of the money when the same shall become due, it shall then be lawful for such creditor or creditors, to take out a writ against such debtor or debtors, and cause him, her or them to be arrested, and the said debtor or debtors, on his, her or their appearance in court, at the return of the writ, shall be obliged to give better security for such debt or debts, if the court shall see cause on the hearing the allegations of the parties so to order it; in which case the defendant shall pay the costs of such suit; but if the court shall be of opinion, that there was not a sufficient cause for demanding better security of the defendant or defendants, and for causing him, her or them to

21 Better security.

be arrested, then judgment shall be given against the plaintiff or plaintiffs, who shall be adjudged to pay to the defendant or defendants such costs and charges as the court shall think fit to allow.

*Passed March 24, 1770.*

## II.

1817. A SUPPLEMENT to an act, entitled, "*An act directing the manner of suing out Attachments within this government.*"

22 Attachment vs. resident. (1)

Section 1. After the passing of this act, a writ of attachment may issue out of any court of law of this State, for any sum to the amount of thirty-two dollars and upwards, against a residenter in the State, upon one *non est inventus* being returned, by the Sheriff or Coroner, upon a writ taken out against such residenter and delivered to the Sheriff or Coroner at least twenty days before return thereof, and such proof made, of the cause of action, and of the defendant having absconded, as the court shall judge sufficient cause for issuing an attachment; and that so much of the first section of the said recited act, as requires two *non est inventuses* upon two writs taken out against a residenter before issuing such attachment, be and the same is hereby repealed.

23 Order of sale of perishable &c. goods (6)

Sect. 2. Any one Judge of the court, from which attachment process may be issued, shall hereafter have the same power to order the sale of goods and chattels attached, where the same are of a perishable nature or may create expense in keeping them, as three Justices of the Court of Common Pleas now have, under the provision of the fifth section of the act to which this is a supplement; and such order shall be executed and proceeded on, by the officer named therein, in the same manner as is directed by the said fifth section of the said original act.

24 Judgment at 2d term. (12)

Sect. 3. Judgment shall be given for the plaintiff, in any original attachment, at the second term of the court after issuing the writ, unless the defendant, or some sufficient person for him or her, shall enter special bail, as is required and provided by the said act to which this is a supplement, any thing in the tenth section of the said act to the contrary notwithstanding.

*Passed at Dover, January 31, 1817.*

## III.

1823. AN ADDITIONAL SUPPLEMENT to the act, entitled "*An act directing the manner of suing out Attachments within this government.*"

25 Attachment vs. non-resident. [18]

Section 1. A writ of attachment may issue out of any court of law in this State, against a non-resident, upon the plaintiff or plaintiffs, or some other credible person for him, her or them, making oath or affirmation, that the defendant or defendants reside out of this State, and is or are justly indebted to him, her or them, in the sum of fifty dollars, and upwards; which oath or affirmation shall be administered by the Clerk of the Supreme Court or Prothono-

## ATTACHMENT.

53

tary of the Court of Common Pleas, and filed of record in the said cause; and the said writ of attachment shall be proceeded in as is directed and required by the third section of the act to which this is an additional supplement, and the act supplementary thereto; and so much of the act to which this is an additional supplement, as requires the person or persons requesting a writ of attachment, or some other credible person for him, her or them, to make oath or affirmation, that the defendant avoids coming into this government, lest he or she be taken to answer his or her just debts, is hereby repealed, made null and void.

*Passed at Dover, January 17, 1823.*

## ATTORNMEN<sup>T</sup> AND WARRANTY.

### AN ACT concerning attornment and warranty.

Section 1. Grants of rents, of reversions and of remainders, are, and shall be good and effectual without attornment 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 the benefit of such payment, by way of discharge from the rent. <sup>1 Attornment not necessary.</sup>

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. <sup>2 to stranger—void.</sup>

Sect. 2. 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. <sup>3 Collateral warranty.</sup>

*Passed at Dover, February 11, 1829.*

## AUDITOR OF ACCOUNTS.

### AN ACT fixing the salary of the Auditor of accounts.

1820.

Section 1. The Auditor of accounts shall receive, for his services, the sum of four hundred dollars, annually, to be paid quarterly by the Treasurer of this State. <sup>1 Salary.</sup>

*Passed at Dover, February 8, 1820.*

1829.

## AN ACT concerning the Auditor of accounts.

2 Auditor of  
Accounts.  
3 Appoint-  
ment & term.

Section 1. 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.

4 Vacancy.

5 Accounts to  
be settled.  
a (13)

Sect. 2. It shall be the duty of the Auditor of accounts annually to settle (a) 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.

6 Report to  
Gen<sup>l</sup> Assem-  
bly,

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:

7 contents.

I. A statement of the accounts settled as aforesaid of the State Treasurer, both as State Treasurer and as Trustee as aforesaid, showing all the items of said accounts, with a summary reducing to general heads the receipts and payments and showing 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; showing 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; showing 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; showing 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; showing 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.

Sect. 3. 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 Sheriff for each county and every constable charged upon any abstract in the Auditor's 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.

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 aforesaid, 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.

The Auditor shall certify to the Attorney General and also to the General Assembly any delinquency of either of said officers.

8 Accounting of Secretary of State—State Treasurer. (13)

9 Treasurer of county, of poor, sheriffs, constables.

10 Notice,

11 penalty for neglect.

12 Neglect certified



13 Settlement  
& vouchers.

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.

14 witnesses.

Sect. 4. 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 subpoena 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.

15 State tax.

Sect. 5. 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 separate 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:

16 Warrant to  
State Treasurer,

17 form,  
[28]

*Delaware, ss. The State of Delaware to the State Treasurer, Greeting:*

*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 chattels 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 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 delivered 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.*

18 [Levy  
Court 43-59]

*(Seal of) Given under the hand and the seal of office of the Auditor  
(office.) of accounts, at the Auditors's office, the — day of —  
in the year of our Lord, one thousand eight hundred and —  
—, Auditor of accounts.*

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. 18 docket,

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. 19 amending,

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 indorsement under his hand upon the warrant according to the following form: 20 Collectors appointed by State Treasurer,

*I appoint — of — county my collector to execute this warrant.*

— State Treasurer.

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. 21 certified to & entered by Auditor.

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: 22 State Treasurer responsible for collectors.  
23 Collector's bond (25)

*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 administrators 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.* 24 condition

There shall be subjoined to the said obligation a warrant of at- 25 Judg. next bond

torney to confess judgment thereon. If 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.

26 death, &c.  
of collector  
(27)

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.

27 Executor  
or Adm'r of  
collector

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.

28 Powers  
under warrant

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 the eighth section of the said act is adopted in every particular for regulating and determining all matters touching the execution of such warrant.

[Levy Court,  
43—59]

29 overplus of  
a county's  
portion.

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.

30 Clerk of  
the Peace to  
certify to Au-  
ditor abstracts  
of assessment  
lists.

Sect. 6. 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 assessment 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. 31 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 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, a copy 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. 32 & transfers  
33 & proceedings of Levy Court  
34 any copy on request

If any Clerk of the Peace shall refuse or neglect to perform truly and faithfully any duty herein-before 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. 35 Penalty for neglect

Sect. 7. 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, showing 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 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 36 Cl'k of the Peace to certify to Auditor fines, &c.  
37 Cl'k of Su Court & Prothonotary likewise

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.

38 Justices of  
the Peace also

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.

Any number of abstracts transmitted at the same time may be contained in one list, and included in one certificate.

39 Penalty for  
neglect

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.

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 eight hundred and twenty-seven.

40 duplicate  
rec'ts for pay-  
ments to St.  
Treasurer

Sect. 8. Any Sheriff or any constable, paying any sum to the State Treasurer, shall take duplicate receipts and transmit one to the Auditor of accounts.

41 Secre'y of  
State to certi-  
fy to Auditor  
certain laws

Sect. 9. 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.

42 Seal of of-  
fice

Sect. 10. 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.

43 Auditor's  
bond [47]

Sect. 11. 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 :

44 condition

*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 undamaged, then the said obligation shall be void.*

45 recorded  
&c

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 if in session. 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.

duty of Sec'y of State

46 Oath

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.

47 failure to give bond

*Passed at Dover, February 6, 1829.*

## BAIL.

### AN ACT concerning bail.

1829.

Section 1. 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. 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. Bail 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.*

1 Bail in civil suits (8)

2 sufficient bail

3 bond

1 Sellon's Pr 137

3 Black. Com. 293.

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 show 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.

4 cause of bail

5 common bail

6 special bail

3 Black. Com. 291

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.

7 Assignment of bail bond (8)

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 admin-

8 Attachment for contempt

istrators : the court awarding the attachment or any judge thereof may 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.

9 action on  
bail bond  
1 Sellen'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.

10 taking in-  
sufficient bail

11 rule to  
bring in body

Although 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.

12 Bail in  
criminal cases

Sect. 2. 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, 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.

15 returned  
default

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.

16 Warrant in  
criminal case  
4 Black. Com.  
288, 290.

to whom.

Sect. 3. 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.

17 if for felo-  
ny, executed  
in either  
county

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 (*a*) 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.

18 right of accused arrested in another county.

*a* (21)

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 alleged 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 (*b*) 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 evidence on the trial of the accused.

19 examination of accused  
4 Black. Com.  
296. M'Nally  
Ev. 38 ch. 6  
rule 1 Ib. 41  
8 rule 8.  
20 commitment or bail

(29)  
21 when bail to be given of course.

*b* (18)  
22 In felony — Justice to write examination.  
23 and 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 hazarded: 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.

24 Witnesses' recognizance.

25 surety when required.

26 Witness committed.

(29)  
27 Recognizance of bail.

28 who may take.

29 Sum indorsed on commitment

30 Bail after commitment

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 Court and of the Court of Common Pleas and Justice of the Peace shall 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 recognizers. 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.

A person committed for want of bail or security shall be dis-



charged 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.

- 33 Capital of-  
fences when  
& how bail-  
able  
4 Black. Com.  
249
- 32 proceeding
- 33 Insufficien-  
cy of commit-  
ment
- 34 proceeding  
thereon
- 35 costs
- 36 Recogni-  
zances trans-  
mitted
- 37 Sh'ff to de-  
liver lists of  
prisoners  
(Coroner, 24)
- A capital offence shall not be bailable; but the Supreme Court or the Court of General Quarter Sessions of the Peace and Gaol 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.
- 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 proceeding 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.
- Any costs arising in such case may be ordered to be paid by the county or otherwise; but if the commitment be insufficient, the Justice or officer, who made it, shall have no compensation for attendance.
- Sect. 4. 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 Gaol Delivery in each county, on the first day, the Sheriff of such county shall deliver a list of all prisoners in the public gaol in said county with the cause of each commitment; and to each Court of Oyer and Terminer and General Gaol 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.

*Passed at Dover, January 26, 1829.*

## BANKS.

### I.

AN ACT to prevent the increase of Banking Companies.

Section 1. From and after the passing of this act it shall not be

lawful for any persons to associate together for the purpose of forming themselves into a banking company, without first obtaining from the General Assembly, an act of incorporation; and if any persons shall associate together with an intention of creating a banking company, and shall proceed to appoint a day to receive subscriptions for the shares into which the capital stock is to be divided, each person who shall act as commissioners, directors or managers for receiving such subscriptions, shall forfeit and pay the sum of two thousand dollars, to be recovered by action of debt, bill, plaint or information, in any court of record within this State, one moiety thereof to be applied to the use of the State, and the other to the person or persons who will sue for the same.

Sect. 2. If any person or persons, co-partnership or body politic, shall subscribe for any share or shares in such contemplated bank, he, she or they shall forfeit and pay the sum of five hundred dollars, to be recovered and applied in manner aforesaid.

Sect. 3. From and after the passing of this act, it shall not be lawful for any association of persons that may hereafter originate or become connected for the purposes of banking, to make, utter or issue any bills or notes in the nature of bank notes, payable to bearer or order, or loan any sum or sums of money upon any actual or accommodation note or notes, or receive any sum or sums of money in the nature of deposits, or to do or perform any other act which an incorporated banking company may lawfully do; and if any person or persons, principals or agents of any such association, for the purpose of banking, shall do or perform any of the acts hereby prohibited, each and every person so offending shall forfeit and pay for every such offence, the sum of five hundred dollars, to be recovered and applied as herein before directed.

Sect. 4. From and after the passing of this act, it shall not be lawful for any person or persons to offer or accept in payment any note or notes issued from any such unincorporated bank or banks, knowing it to be such; and all payments which may be made or accepted from and after the passing of this act wherein any such note or notes shall be the medium, shall be and the same are hereby declared to be null and void.

Sect. 5. Nothing in this act contained, shall extend to any partnership in trade or business in such manner and for such purposes as hath hitherto been usual and lawful, but only to the business of banking or making, issuing or uttering of any bills or notes, payable to bearer or order or otherwise, to receive deposits and loaning money on discount, in the manner herein before mentioned, by any banking company who may hereafter originate and become associated or connected for the purposes aforesaid.

*Passed February 4, 1811, (temporary,) and re-enacted and continued without limitation, Feb. 11, 1812.*

## II.

AN ACT to prohibit the issuing and circulation of small notes. 1818.

Section 1. No bank within this State shall issue or circulate any promissory note or notes less in value than one dollar.

Bank Notes  
under \$1 pro-  
hibited

charged 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.

33 Capital of-  
fences when  
& how bail-  
able  
4 Black. Com.  
249  
32 proceeding  
A capital offence shall not be bailable; but the Supreme Court or the Court of General Quarter Sessions of the Peace and Gaol 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.

33 Insufficien-  
cy of commit-  
ment  
34 proceeding  
thereon  
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 proceeding 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.

35 costs  
Any costs arising in such case may be ordered to be paid by the county or otherwise; but if the commitment be insufficient, the Justice or officer, who made it, shall have no compensation for attendance.

36 Recogni-  
zances trans-  
mitted  
37 Sh'ff to de-  
liver lists of  
prisoners  
(Coroner, 24)  
Sect. 4. 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 Gaol Delivery in each county, on the first day, the Sheriff of such county shall deliver a list of all prisoners in the public gaol in said county with the cause of each commitment; and to each Court of Oyer and Terminer and General Gaol 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.

*Passed at Dover, January 26, 1829.*

## BANKS.

### I.

AN ACT to prevent the increase of Banking Companies.

Section 1. From and after the passing of this act it shall not be

lawful for any persons to associate together for the purpose of forming themselves into a banking company, without first obtaining from the General Assembly, an act of incorporation; and if any persons shall associate together with an intention of creating a banking company, and shall proceed to appoint a day to receive subscriptions for the shares into which the capital stock is to be divided, each person who shall act as commissioners, directors or managers for receiving such subscriptions, shall forfeit and pay the sum of two thousand dollars, to be recovered by action of debt, bill, plaint or information, in any court of record within this State, one moiety thereof to be applied to the use of the State, and the other to the person or persons who will sue for the same.

1 Unincorporated Banks prohibited

penalty 2 for receiving subscriptions

Sect. 2. If any person or persons, co-partnership or body politic, shall subscribe for any share or shares in such contemplated bank, he, she or they shall forfeit and pay the sum of five hundred dollars, to be recovered and applied in manner aforesaid.

3 for subscribing

Sect. 3. From and after the passing of this act, it shall not be lawful for any association of persons that may hereafter originate or become connected for the purposes of banking, to make, utter or issue any bills or notes in the nature of bank notes, payable to bearer or order, or loan any sum or sums of money upon any actual or accommodation note or notes, or receive any sum or sums of money in the nature of deposits, or to do or perform any other act which an incorporated banking company may lawfully do; and if any person or persons, principals or agents of any such association, for the purpose of banking, shall do or perform any of the acts hereby prohibited, each and every person so offending shall forfeit and pay for every such offence, the sum of five hundred dollars, to be recovered and applied as herein before directed.

4 for issuing notes, receiving deposits, &c.

Sect. 4. From and after the passing of this act, it shall not be lawful for any person or persons to offer or accept in payment any note or notes issued from any such unincorporated bank or banks, knowing it to be such; and all payments which may be made or accepted from and after the passing of this act wherein any such note or notes shall be the medium, shall be and the same are hereby declared to be null and void.

5 unlawful to pass notes of

Sect. 5. Nothing in this act contained, shall extend to any partnership in trade or business in such manner and for such purposes as hath hitherto been usual and lawful, but only to the business of banking or making, issuing or uttering of any bills or notes, payable to bearer or order or otherwise, to receive deposits and loaning money on discount, in the manner herein before mentioned, by any banking company who may hereafter originate and become associated or connected for the purposes aforesaid.

6 common partnership business not affected

*Passed February 4, 1811, (temporary,) and re-enacted and continued without limitation, Feb. 11, 1812.*

## II.

**AN ACT** to prohibit the issuing and circulation of small notes. 1818.

Section 1. No bank within this State shall issue or circulate any promissory note or notes less in value than one dollar.

Bank Notes under \$1 prohibited

8 void

9 penalty  
for issuing

Sect. 2. All and every note or notes, issued or circulated contrary to the provisions of this act, shall be void and of no effect : and the bank or banks, which issued the same, shall, for every such offence, forfeit and pay the sum of ten dollars, to be recovered in any court of record in this State, by bill, plaint or information, by any person who shall sue for the same.

10 for passing  
&c.

Sect. 3. If any person or persons shall, after the first day of June next, pass, or attempt to pass, any promissory note or notes, of any bank or banks, company or companies, or any corporation, or individual or individuals, intended to circulate as money or to be used instead of money, less in denomination or value than one dollar, he, she or they, so offending, shall forfeit and pay, for every such offence, the sum of ten dollars, to be recovered before any Justice of the Peace in this State, in the same manner that debts of like magnitude are recovered by any person or persons who may sue for the same.

*Passed at Dover, February 6, 1818.*

### III.

1820. AN ACT for the continuance of certain banks therein mentioned, and for securing payments in specie, by the said banks, to persons holding their notes.

11 Penalty on  
Banks not  
paying specie

† (13)

Sect. 2. If the said banks shall refuse, at their banking houses respectively, when they are duly called upon for any notes of the said banks respectively there payable, to pay in specie the full amount thereof, to the person presenting the same, the bank, so refusing, shall forfeit and pay, to such person,† twenty per centum, in addition to the amount of such notes, to be sued for and recovered, by the holder thereof, with costs of suit, as other debts due from the said banks respectively, may be sued for and recovered. (a)

12 Penalty for  
passing or re-  
ceiving Bank  
Notes at dis-  
count

Sect. 3. From and after the first day of May next, it shall not be lawful for any person or persons, within this State, to pay or receive, or offer to pay or receive, or in any other way barter or exchange, any bank note, or bill, or paper purporting to be a bank note or bill, for any amount less than is made payable on the face of such bank note or bill; and for every offence, committed against this provision, the person or persons, so offending, shall forfeit and pay a sum, equal to the nominal value of such bank note or notes, to be recovered, as debts of a like amount are now recoverable by the laws of this State, by, and for the use of, any person who will sue for the same.

*Passed 11 February, 1820.*

a. This section is in force in respect to the Bank of Wilmington and Brandywine only. The other banks having accepted the "Act securing payment by the Banks of this State of their notes in specie," section 2 of that act (13) is as to them substituted for this section.

## IV.

AN ACT securing payment by the banks of this State of their notes 1824  
in specie. (b)

Section 2. If any bank in this State shall, at any time, refuse or neglect to pay, in specie, on demand any bill, note or obligation issued by such bank, if such note, bill or obligation shall be presented at the banking house of such bank, or of the branch where such note, bill or obligation shall be made payable, then, and in every such case, the holder of any such note, bill or obligation shall be entitled to receive and recover interest on such note, bill or obligation, until the same shall be fully paid and satisfied, at the rate of twelve per centum per annum, from the time of the demand thereof.

13 Penalty on Banks not paying specie

Sect. 3. If the president, directors and company of the several banks in this State, or if any or either of them shall accept this act as a part of the charter of incorporation of such banks respectively, and shall certify such acceptance to the Governor, by certificate under the seal of the bank and the hand of the president, then this act, from the time the acceptance thereof shall be so certified, shall become and be a part of the charter of incorporation of the bank, the president, directors and company of which shall so certify such acceptance, to all intents and purposes, as fully and effectually as if this act had been originally a part of such charter: and the Governor shall communicate the tenor of such certificate to the General Assembly by message; and the printed journal of the Senate or the House of Representatives shall be conclusive evidence of such message, and of every part thereby communicated: but if the president, directors and company of any bank in this State, shall omit to certify their acceptance of this act to the Governor, so that he shall not receive such certificate on or before the fifteenth day of January next, this act, so far as the same shall concern any bank the president, directors and company whereof shall so omit to certify, shall cease and be of no effect from and after said day; and the law which concerns such bank, and is hereby repealed, so far as it shall relate to the bank, the president, directors and company whereof shall so omit to certify, shall, from and after said last mentioned day, be and stand revived and in full force.

14 Acceptance of this Act—how signified—& consequence of failure

*Passed at Dover, January 30, 1824.*

## [BANK OF DELAWARE.]

(Acts of Assembly 2)

This Bank was incorporated by Act of the General Assembly passed February 9, 1796, by the name of "*The President, Directors and Company of the Bank of Delaware.*"

15 Corporate name

(b) Section 1 of this Act repeals section 2 of the preceding Act of 11 February 1820—(12) and section 2 of the supplement to said Act of February 5, 1821 and sections 21 and 23 of the "Act to incorporate a company and establish a Bank by the name of the Bank of Smyrna"—provided the banks interested should accept this Act. (14) The Farmers' Bank of Delaware, and the Bank of Smyrna did duly accept this act. The Bank of Delaware afterward by virtue of a Supplement of 2 February 1826, accepted. See Note a.

- 16 continu- The charter was extended by Act of 7 February, 1822, to Sep-  
ance  
17 No Judge tember 1, 1852.  
director No Judge of any court of this State can be a director.]

[THE FARMER'S BANK OF THE STATE OF DELAWARE.]

- 18 Corporate This Bank was incorporated by Act of the General Assembly  
name passed February 4, 1807, by the name of "*The President, Directors  
and Company of the Farmer's Bank of the State of Delaware.*"
- 19 continu- The Charter was extended by Act of 7 February, 1822, for 25  
ance years from September 1, 1822.
- 20 capital The capital is \$500,000 in 10,000 shares, each of \$50.
- 21 principal & The institution consists of a principal bank, at *Dover*, and three  
branches branches, at *Newcastle, Georgetown and Wilmington.*
- 22 Directors There are thirty-six directors; viz: twelve, who must be resi-  
dent three in each county and also three in *Newcastle county* for the  
branch at *Wilmington*, chosen by the General Assembly, and twenty-  
four, who must be stockholders and resident six in each county and  
also six in *Newcastle county* for the branch at *Wilmington*, chosen  
by the stockholders in general meeting at *Dover*, on the first Wed-  
nesday after the first Tuesday in every year. Not more than  
three-fourths of the directors chosen by the stockholders (exclusive  
of the president) are eligible the succeeding year. The directors  
may supply a vacancy in the place of a director chosen by the  
stockholders; and the Governor has power to supply a vacancy in  
place of a director chosen by the General Assembly.
- 23 vacancies No judge of any court of this State can be a director.
- 24 No Judge It is unlawful for the chancellor or a judge of any court of  
can be a di- the state, after September 22, 1822, to purchase directly or indi-  
rector rectly, in his own name or in the name of any person in trust for  
or purchase him, stock in this Bank.
- stock
- 25 voting Shares not holden two calendar months before the day of an  
election, do not confer a right to vote in such election.
- 26 Board Less than five directors cannot form a board at the principal  
Bank or a branch.
- 27 yearly The directors must meet annually on the first Tuesday of Janu-  
meeting of ary at the Bank in *Dover.*
- directors
- 28 dividends Half yearly dividends shall be made of so much of the profits  
of the institution as shall appear to the directors advisable, and  
once in every three years the directors shall lay before the stock-  
holders, at a general meeting for their information, an exact and  
particular statement of the debts, and of the surplus profit, if any  
after deducting losses and dividends.
- 29 rate of in- The Bank is not allowed to take more than the rate of six per  
terest cent. per ann. upon its loans or discounts.
- 30 form of Notes offered for discount shall on the face thereof be made ne-  
notes gotiable at the Farmer's Bank of the State of Delaware; and  
when the drawer shall not reside in, or within one mile of *Dover*,  
*Newcastle* or *Georgetown*, such note shall be made payable at the  
house of some person at *Dover*, *Newcastle* or *Georgetown*; (a)  
and notice given by the proper officer of the Bank at the said house
- a (61)

that such note hath become due shall be held as binding on the drawer and indorser as if notice had been personally served on each of them.

The stock is assignable according to rules prescribed in the by-laws. 31 Stock assigned

The Bank can not be concerned in any article but notes, bills of exchange, mortgages, stock of the United States, or bullion, except in case of debts due to the Bank, when they may take any kind of security they can obtain. 32 Articles in which Bank may deal.

The lands, tenements and hereditaments, which it is lawful for the Bank to own are only such as shall be requisite for its accommodation in relation to the convenient transaction of its business, and such as shall have been bona fide mortgaged to it by way of security for or conveyed to it in satisfaction of debts previously contracted in the course of its dealings or purchased at sales upon judgments for such debts. 33 real estate

The Bank is authorized by Act of Jan. 30, 1810, to insure against losses by fire, and on lives. 34 Insurance

#### [BANK OF WILMINGTON AND BRANDYWINE.]

This Bank was incorporated by Act of the General Assembly passed February 4, 1812, by the name of "*The President, Directors and Company of the Bank of Wilmington and Brandywine.*" 35 Corporate name

The charter was extended by Act 7 February 1822 to September 1, 1843. 36 continuance

No judge of any court of this state can be a director. 37 No Judge a director  
The capital can not exceed \$120,000. 38 capital

#### [BANK OF SMYRNA.]

This Bank was incorporated by Act of the General Assembly passed February 5, 1821, by the name of "*The President, Directors and Company of the Bank of Smyrna.*" 39 Corporate Name

The charter was extended by Act of 7 February, 1822, to September 1, 1843. 40 continuance

The capital is \$100,000 in 2000 shares, each of \$50. 41 capital

This Bank is authorized to have an office of discount and deposit at Milford. 42 Office at Milford

There are nine directors chosen in a general meeting of the stockholders, at Smyrna on the first Thursday of May annually. A vacancy may be supplied by the directors. Directors must be stockholders. Less than five directors can not form a board. 43 directors

The Bank is not allowed to take more than the rate of six per cent. per ann. upon its loans or discounts. 44 vacancy  
45 board

The stock is assignable according to rules prescribed in the by-laws. 46 rate of interest  
47 assignment of stock

The bank can not be concerned in any article but bonds, notes, bills of exchange, mortgages, stock of the United States, or bul- 48 Articles in which Bank may deal



lion, except in case of debts to the bank, they may take any kind of security they can obtain.

49 Real estate

The lands, tenements and hereditaments, which it is lawful for the bank to hold are only such as are requisite for its accommodation in relation to the convenient transaction of its business, and such as are bone fide mortgaged to it by way of security or sold to satisfy judgments for debts due to the bank or which it may be necessary to purchase to save debts due to them.

50 Form of notes for discount a [51]

Notes offered for discount shall on the face thereof be made negotiable (a) at the Bank of Smyrna, and when such note shall become due and payable, and payment not be made to the officer of said bank the drawer and indorser on such notes shall be as completely bound to pay said notes as if notice had been personally served on each of them.]

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1827. AN ACT relating to the Farmers' Bank of the State of Delaware and the Bank of Smyrna.

51 Notes for discount or collection at Farmers Bank

Section 1. Negotiable notes drawn in any form may be discounted or collected by the Farmers' Bank of the State of Delaware, at Dover, Wilmington, New Castle or Georgetown.

52 at Bank of Smyrna

Sect. 2. That the privilege hereby granted to the Farmers' Bank and its branches, be and the same is hereby granted to the Bank of Smyrna.

Passed February 7, 1827.

53 Amount Bank may owe

[The total amount of debts, which either of the aforesaid banks are at liberty to owe, whether by bond, bill, note or other contract, (deposits not included) can not exceed double its capital actually paid. In case of excess, the directors, under whose administration it is occasioned, are personally liable, in addition to the liability of the funds of the bank. A director, if absent when the act occasioning the excess is done, or if present he dissent from such act, may avoid the liability by giving due notice of the fact.

54 Tax

Each of the said banks, as a condition of its charter, must pay semi-annually to the Treasurer of the State the rate of one fourth of one per centum per annum on its capital actually paid.]

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BASTARDY.

1829. AN ACT concerning the maintenance of bastard children.

1 Justices' Jurisdiction.  
(19. 20. 21)  
23. 27. 28. 39)  
2 order  
3 bond

Section 1. 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 se-

veral obligation in the penal sum of one hundred and sixty dollars ; 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 :

4 lying-in expenses and monthly allowance.

5 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.*

6 form

**(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.

7 discharge

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.

8 Bond approved and transmitted.

9 Penalty

10 Trustees of Poor.

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

11 Appeal

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.

12 when supersedeas

13 Recognizance on appeal.

14 proceeding on appeal.

15 Cl'k of the peace to transmit bond.

16 Discretion of Court

17 Mother a witness.

18 her dying declaration.

19 Process.

20 if returned before the birth.

21 Duty of Justices

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 require. 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 according 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.

Sect. 2. 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.

Sect. 3. 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.

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 such child, or give secu-

rity 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.

22 Mother refusing to discover or to give security, committed

The commitment may be according to the following form:

*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.*

23. Form of commitment

*(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.

24 discharge (7)

Upon discovery of the father, process shall be issued against him without delay.

25 Process against father.

The form of the process against the father or the mother may be as follows.

*— county, ss. The State of Delaware, to any constable for (SEAL.) — 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, 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—.*

Form

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."

26 against mother

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.

27 Process against father—directed to constable of either county

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.

28 Proceeding & trial in either county

Sect. 4. 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 ex-

29 Remedy of Trustees of the Poor against father

- ceeding 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 hereinbefore 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.
- 30 Deposition of mother when the father is not found
- 31 Apprentice or servant having bastard child
- Sect. 5. If a female bound as an apprentice or servant shall bear a bastard child within the time of her apprenticeship or 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.
- 32 costs
- Sect. 7. 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—
- To the Justice,
- |  |      |
|--|------|
| For issuing process  | 0 25 |
| For do. subpoena   | 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—
- |  |    |
|--|----|
| 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.  |    |
- 35 Witness
- To Witness—
- |                          |    |
|--------------------------|----|
| For each days attendance | 20 |
|--------------------------|----|
- 36 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, Jan. 24, 1829.*

## BILLS OF EXCHANGE.

Between  
1726 & 1736

### AN ACT concerning bills of exchange.

If any person or persons within this government, shall draw or

indorse any bill or bills of exchange upon any person or persons in England, or other parts of Europe, or beyond the seas, and the same be returned back unpaid, with a legal protest, the drawer thereof, and all others concerned, shall pay and discharge the contents of the said bill or bills, together with twenty pounds per cent. advance for the damage thereof, and so proportionable for a greater or less sum, in the same specie as the same bill or bills were drawn, or current money of this government equivalent to that which was first paid to the drawer or indorser.

Damages on protest of Bills on England

## BILLS OF SALE.

AN ACT to prevent frauds by clandestine bills of sale.

14 Geo. II.

Whereas many frauds have been and daily are committed, by making clandestine bills of sale for goods and chattels within this government, to the prejudice of creditors, who by that means are defrauded of their just debts: for prevention whereof,

Sect. 2. No sale or bill or bills of sale, which shall hereafter be made of any goods or chattels within any of the counties of this government, shall be good or available in law or shall change or alter the property of such goods or chattels, unless a valuable consideration shall be paid or really and *bona fide* secured to be paid for such sale or bill or bills of sale, and unless the goods and chattels sold or contained in such bill or bills of sale shall be actually delivered into the possession of the vendee or vendees, as soon as conveniently may be, after the making of such sale or bill or bills of sale.

1 Bills of sale not good unless, &c.

Sect. 3. And if such goods and chattels sold, or contained, or mentioned in such bill or bills of sale, shall afterwards return or come into, and continue in, the possession of such vendor or vendors, the same shall be chargeable and liable to the demands of all creditors of such vendor or vendors as aforesaid.

2 goods returning to vendor liable

Sect. 4. *Provided always*, That all bills of sale made of goods or chattels within any of the counties of this government by any person or persons within the same to any other person or persons shall be good and effectual against the vendor or vendors of such goods and chattels; any thing herein contained to the contrary notwithstanding.

3 Bills good against vendor

## BOATS AND CANOES.

AN ACT about boats and canoes.

13 Geo. II.

Sect. 1. If any person or persons within this government shall take up any boat or canoe being adrift and secure the same, the taker up of such boat or canoe shall forthwith, at the reasonable charge of the owner if known, send him or her notice thereof; if not known, shall advertise the same in three of the most public places of the town or Hundred where the same are taken up, on penalty of making

1 Taker up of boats or canoes to give notice

2 penalty for neglect good to the owner all the damages he or she shall sustain by the want of such boat or canoe after being taken up.

3 His reward Sect. 2. *And* the taker-up of a boat or canoe shall receive, as a reward from the owner thereof, the sum of five shillings for a boat, and two shillings and six-pence for a canoe.

4 Penalty on carrying away or setting adrift boats, &c. Sect. 3. *And* if any person or persons shall at any time after the publication of this act, take, carry away, or set adrift any boat or canoe from any landing or other place within the said counties, or within one hundred yards of any shore or landing place within this government, without the leave or consent of the owner or possessor of such boat or canoe, and be thereof convicted before any one Justice of the Peace of this government, he or she shall pay to the party aggrieved, all such damages, costs and charges, as shall be awarded by the Justice before whom the complaint shall be brought, so as the costs and damages do not in the whole amount to above forty shillings.

—0—

## BONDS AND PENAL SUMS.

1827. AN ACT regulating proceedings upon public recognizances and bonds and upon specialties containing a penal sum.

1 Recognizances & bonds to the State upon Trust for parties injured Section 1. Every recognizance and bond which has been or shall be acknowledged or executed pursuant to any law or by the direction of the governor 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 recognizance 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.

2 Suits thereon

3 In case of penalty for non-performance, &c. Judgt not for the penalty, but for the damages

Sect. 2. In an action upon such recognizance 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 recognizance, 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 recognizance, bond, or penal sum: but if several actions shall be brought upon the same recognizance, 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.

4 bond, &c.  
not extinguish  
ed by Judg't

5 actions con-  
solidated

In every action upon such recognizance, 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. 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.

6 breaches as-  
signed

7 damages on  
occasion of  
breaches as-  
signed

But any thing herein contained shall not be construed to make a recognizor, obligor or other party liable for damages beyond

8 Liability on  
bond, &c. not



- beyond penalty 9 when penalty not sufficient—preference. penalty of his recognizance, bond or specialty, or in any manner to extend, abridge, or alter the legal effect or operation of any recognizance or other instrument. If the penalty of a recognizance 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 corporations 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.
- 10 Money payable by instalments 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.
- 11 when Judgment for penalty Sect. 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.
- 12 Judgment bonds Sect. 4. 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.
- 13 plea of payment Sect. 5. If any recognizance 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 recognizance or bond or of the record thereof certified under the hand and official seal of the officer, in whose office the said recognizance, 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.
- 14 copies of public bonds
- 15 production of originals

*Passed at Dover, February 3, 1827.*

## BOUNDARIES.

79.

### I.

#### AN ACT against removing land marks.

Between  
1726 & 1736.

For the greater security and certainty of boundaries of lands,  
No person or persons whatsoever within this government, shall  
cut, fall, alter or remove, any certain bounded tree, or other al-  
lowed land-mark, or shall survey any land, or mark any tree as  
a corner-tree, or a line-tree, upon any land not belonging to the  
party so doing, without lawful authority, under the penalty of any  
sum not exceeding fifty pounds, and not less than ten pounds, to  
the use of the party wronged, to be recovered in any court of ju-  
dicature within this government, by bill, plaint, or information,  
wherein no essoign, protection, or wager of law, shall be allowed,  
nor any more than one imparlance.

1 Removing  
land-marks

penalty

### II.

#### AN ACT concerning the perpetuating of evidence respecting the bounds of lands.

1829.

Section 1. 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 show 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 with-  
out the State, and the service duly proved shall be equivalent to  
the service of process. When process is issued twenty days be-  
fore its return, if any owner cannot be found, the Chancellor may  
make a rule upon him to appear on some particular day, and di-  
rect 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 shown, the Chan-  
cellor shall make an order, that commission or commissions issue  
to some suitable person or persons to take the depositions of wit-  
nesses 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 no-  
tice 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.

2 Evidence  
perpetuated

3 Petition

4 Proceedings

5 Commission

6 Notice of  
interrogato-  
ries

7 Witnesses  
produced

Each party shall be at liberty to produce witnesses to be exam-  
ined 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 there-

- 8 Depositions upon 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.
- 9 how evidence
- 10 person not summoned When any person is not summoned upon the subpoena, 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.
- 11 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.
- 12 Clerk 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.
- 13 Oath
- Passed at Dover, January 24, 1829.*

## III.

1796.

## AN ACT for marking and bounding lands.

- 14 marking & establishing Whereas many differences, disputes, and law suits have arisen, and may arise, concerning the location of lands, the bounds whereof have or are in danger of decaying, or becoming obsolete and unknown, or held under courses and distances only, contained in the title papers thereof; the direction of the courses varying in most instances, in a length of time, from the former running, from whence the bounds and descriptions of such lands were made in the certificates, grants, and deeds thereof; and the marking and bounding lands, in such manner that their location would remain permanent, fixed, and certain, would prevent disputes, differences, and law suits, quiet possessions, and of course render lands more valuable.
- 15 petition for commission to mark &c. (31-34) Section 1. Any person seized of an estate in fee simple, fee tail, executory or conditional, or for life, or for term of fifteen years at least, or having an interest in remainder or reversion, in any lands, the bounds whereof have or are in danger of decaying or becoming obsolete and unknown, or held under courses and distances only as to any of the lines thereof, whether courses and distances only are mentioned in the certificate, grant, or deed, under which such land is held, or by the loss of boundaries called for, the person seized is confined to course and distance, having given three months notice, by advertisements set up at the court house door of the county, and at five of the most public places in the Hundred in which the
- 16 Notice

land lies, of his or her intention to apply to the Court of Common Pleas for a commission to mark, bound, and establish his or her land named or otherwise described in such advertisements, and also giving notice in writing to the persons holding the adjoining lands if residing thereon, or if absent leaving such notice at the house of such person or persons, thirty days before the meeting of the said court of the county where such land lies, and if no person lives on the adjoining lands, giving notice four weeks in one of the Wilmington newspapers, and also giving written notice to the owner or owners of the adjoining lands, or to his or her agent or attorney, if known and in the State, thirty days before the meeting of the court as aforesaid, may apply by petition in writing to such court for a commission to mark and bound such land, agreeably to the directions of this act; and upon proof being made by one or more credible witnesses to the court, that such advertisements were duly set up, and notice given as aforesaid, or upon the other persons interested appearing, the court may issue a commission to any five or three persons, agreed on by all parties, empowering them, or a majority of them, to mark and bound the land mentioned in such commission, according to the directions of this act; but if the persons interested, or any of them, shall not agree on the persons for commissioners, then the court shall appoint three or five discreet persons, skilled in land affairs, not interested in the lands, or related to either of the parties, to whom a commission shall issue in manner aforesaid; *Provided always, That no commission shall issue to any person who is a surveyor of lands.*

17 Proof of notice

18 Commission (31)

19 No survey- or a commissioner

20 Notice of the meeting of Commissioners

21 Their oath

22 Summons for Witnesses

23 Power of commissioners

24 Oath of surveyor and chain carriers

Sect. 2. The said Commissioners or a majority of them, shall cause advertisements to be set up at the door of the court house of their county, and such other public places as they may judge most effectual, notifying the time of their meeting, twenty days at the least before their meeting, and shall meet on the land and proceed in the execution of their commission, agreeably to the notice given them as aforesaid; but before any commissioner shall proceed in the execution of any such commission, otherwise than by giving notice as aforesaid, and issuing summonses for witnesses, he shall take an oath or affirmation, before some Judge or Justice of the Peace, *That he will settle and adjust the location of the land mentioned in such commission, most agreeably to the true original location thereof, according to the evidence and circumstances which shall be offered or appear to him, without favour, affection, or partiality, according to the best of his experience, abilities and judgment, and will make a true return thereof.*

22 Summons for Witnesses

23 Power of commissioners

24 Oath of surveyor and chain carriers

Sect. 3. Summonses for witnesses may issue out of the court, or by the said commissioners, or a majority of them; and witnesses summoned shall attend, and be subject to punishment by the court for not attending, in the same manner as on summonses issued by and returnable to the courts; and the commissioners may cause the land mentioned in such commission, as well as any other lands they may think proper, to be surveyed, by such skillful surveyor as they may think fit to appoint, or by any two surveyors chosen by the parties respectively, and may administer an oath or affirmation to the surveyor, and also to the chain carriers, to execute their respective duty as surveyor, or chain carriers, as the case

- may be, *faithfully and impartially, according to the best of their skill*; and shall also administer an oath or affirmation to every witness, *That the evidence which such witness shall give to the commissioners in the matter depending before them, shall be the truth, the whole truth, and nothing but the truth*; and the said commissioners, or any two or more of them, may adjourn from time to time as they may think necessary; and they, or the majority of them met and concurring in opinion, may and shall cause the land mentioned in such commission to be marked in the lines where convenient, and shall mark or set up boundaries where they have or are in danger of decaying, or becoming obsolete and unknown, and at the termination of the lines when course and distance only are given, according to their adjudication and adjustment of the location thereof; and shall return a certificate of such marked bounds, lines, and boundaries, to the court, under their hands; which return shall be received and recorded by the Recorder of such county, in a book by him to be provided for such purposes, unless the court shall otherwise order and direct, on account of any misconduct in the commissioners.
- 25 of witness-  
sea
- 26 Proceed-  
ings
- 27 return
- 28 effect of  
the return  
(29-30)
- 29 Saving as  
to infants, &c.
- 30 persons in  
possession
- 31 when  
bounds fixed  
by agreement
- 32 Agreement  
recorded
- 33 compensa-  
tion
- Sect. 4. In case no suit or action shall be brought, within seven years next after the recording such return, to call in question the adjudication of the commissioners the marking and bounding such land as aforesaid, the record thereof shall be conclusive evidence of the original location thereof, both as to the bounds, directions, and termination of the lines; or if the adjudication of the commissioners shall be confirmed by the verdict of a jury, in any suit as aforesaid, the adjudication of the commissioners in the point confirmed by the jury, and between the same parties and those claiming under them, or either of them, shall conclude to every intent and purpose: *Provided*, That every infant, married woman, insane person, or person in prison, or beyond sea, and those claiming under them, or either of them, shall have five years after the disability removed, to commence such suit or action as aforesaid: *And provided also*, That the said term of seven years shall not be deemed or taken to run, or commence its operation, against any person or persons while he or they continue in possession of the land in controversy.
- Sect. 5. If the parties interested have fairly agreed, or shall hereafter agree, to settle the bounds, line or lines, of any land, and have fixed, or shall fix, the bounds thereof, or boundaries at the termination of such line or lines, to mark and ascertain as well the direction as extent of the line or lines, no commission shall have power or authority between the same parties, or those claiming under them, or either of them, to vary from the line or lines so settled, agreed, or ascertained; and if any person or persons shall hereafter agree to settle and ascertain the location of their lands, and fix boundaries for the same, such settlement and agreement, and a plot of the land so settled, may, by the consent of the parties interested, be recorded as aforesaid, under the direction of the said court, and when recorded, shall have the same effect and consequences as if the location of such land had been settled by commissioners as aforesaid.
- Sect. 6. Each commissioner shall be entitled to one dollar for

every day he shall attend, in the execution of such commission; any person acting as a surveyor, shall receive such *per diem* allowance as shall be adjudged by the commissioners, not exceeding two dollars for every day he shall necessarily be employed; each chain carrier shall be entitled to eighty cents, and each witness shall be entitled to fifty cents, for each day they shall respectively attend, to be paid by the person at whose request the service shall be performed; and if necessary, an attachment of contempt shall be issued by the court to compel such payment.

Sect. 7. *And whereas* it may often happen that divers persons hold parts of one and the same tract of land, in the adjustment and fixing the bounds and outlines of which they are severally interested; and persons holding younger surveys are frequently interested in the location of elder, interfering, or neighbouring surveys:—where divers persons hold separate parts of one and the same tract, they, or any of them, may have a commission as aforesaid, as well to fix, mark, and bound the whole, as the particular parts thereof; and where any person or persons hold a younger survey, and are thereby interested in the location of interfering or neighbouring elder surveys, they shall be entitled to a commission as aforesaid, to fix, mark, and bound any such elder survey; *Provided*, That the person, or some one of the persons applying for such commission, give notice, in writing, to the person seized of such elder tract, of his or their intention of applying for such commission, three months before they petition therefor, and the person seized of such elder tract shall have neglected to apply for and obtain a commission as aforesaid; and every such commission shall be obtained and proceeded on in like manner, and the execution thereof shall have the same effect, as if the commission had been obtained by a person seized of the land therein mentioned.

34 Holders of parts & under younger surveys

35 notice to,

36 & neglect of holder under older survey

*Passed February 10, 1796.*

## CHESAPEAKE AND DELAWARE CANAL.

### I.

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.

[By Sect. 2. The subscribers, their heirs and assigns are incorporated by the name of the Chesapeake and Delaware Canal Company.]

1 Corporate name

Section 8. For and in consideration of the expenses the said stockholders will be at, not only in cutting the said canal, and other works, for opening the said navigation, but in maintaining and keeping the same in repair, the said canal works, with all their profits under the limitations aforesaid, shall be and the same are hereby vested in the said corporation forever; subject nevertheless to the condition hereafter mentioned; and it shall and may be lawful for the said president and directors, after the said

2 Canal vested in the corporation

## CHESAPEAKE AND DELAWARE CANAL.

canal shall be made navigable, to demand and receive the following tolls at such place or places in the canal as they may hereafter direct; *provided* that the whole toll received shall not amount to more than the rates fixed by this Act; *that is to say*:

		Dolls. Cts.	
3 Tolls (11)	Every Pipe of Wine or French Brandy - - -	1	25
	Every Hogshead of Wine or Rum, or other Spirits	1	0
	Every Hogshead of Tobacco - - -	1	0
	Every Hogshead of Beer, Cider, Rice or Molasses .	0	75
	Every Barrel - - - - -	0	25
	And all other Casks or Kegs in proportion according } to the Quantity and Quality of their contents.		
	For Casks of Linseed Oil, same as Spirits		
	Every Bushel of Wheat, Peas, Beans or Flaxseed	0	4
	Every Bushel of Indian Corn or other Grain or Salt	0	2
	Every Barrel of Pork, Beef or Fish - - - -	0	30
	Every Barrel of Flour - - - - -	0	20
	Every Ton of Hemp, Flax, Pot-ash, Bar or manufac- } tured Iron - - - - -	2	0
	Every Ton of Pig Iron or Castings - - - - -	1	0
	Every Ton of Copper, Lead or other Ore, other than } Iron Ore - - - - -	1	0
	Every Ton of Stone or Iron Ore - - - - -	0	50
	Every Chaldron of Coals - - - - -	0	37
	Every Hundred Pipe or Hogshead Staves, or Pipe or } Hogshead Heading - - - - -	0	10
	Every Hundred Barrel Staves, or Barrel Heading	0	6
	Every Thousand Shingles two feet long or more	0	75
	Every Thousand Shingles less than two feet long	0	50
	Every Hundred Cubic Feet of Plank or Scantling	0	75
	Every Hundred Cubic Feet of other Timber - - -	0	40
	Every Gross Hundred Weight of all other Commodi- } ties or Packages - - - - -	0	10

And for all other commodities the same proportion, agreeably to the articles herein enumerated.

4 when com- And every boat or vessel, which has not commodities on board  
modities yield to pay the sum of four dollars, shall pay so much as, with the  
not \$4 commodities on board, will yield the sum aforesaid.

5 empty boats And every empty boat or vessel four dollars, except an empty  
boat or vessel returning, whose load has already paid the tolls af-  
fixed, in which case she shall repass toll free, *provided* such boat  
or vessel shall return within thirty days after paying said tolls.

6 Penalty for Sect. 9. In case of refusal or neglect to pay the toll at the time  
refusing toll of offering to pass through the said canal, and previous to the ves-  
sel passing through the same, the collectors of the said tolls may  
lawfully refuse passage to such vessel; and if any vessel shall  
pass without paying the said toll, then the said collectors may  
seize such vessel wherever found, and sell the same at auction  
for ready money, which so far as is necessary, shall be applied to-  
wards paying said toll, and all expenses of seizure and sale, and  
the balance, if any, shall be paid to the owner, and the person  
having the direction of such vessel shall be liable for such toll if

the same is not paid by the sale of such vessel as aforesaid; *Provided*, that the said proprietors or a majority of them, holding at least five hundred shares, shall have full power and authority at any general meeting to lessen the said tolls, or any of them; *Provided also*, That the same rate of tolls shall be paid on articles passing from Chesapeake to Delaware, as upon those paid from Delaware to Chesapeake.

7 power to  
lessen tolls

Proviso

Sect. 10. The said canal and the works to be erected thereon, in virtue of this act when completed, shall forever thereafter be esteemed and taken to be navigable as a public highway free for the transportation of all goods, commodities or produce, whatsoever, on payment of the tolls imposed by this act; and no toll or tax whatsoever, for the use of the waters of the said canal and the works thereon erected, shall at any time hereafter be imposed by all or either of the said States, (*a*) except as is hereinafter provided.

8 Canal a pub-  
lic highway

9 exemption  
a Pennsylva-  
nia, Maryland  
and Delaware  
are before  
named

Sect. 16. Whenever said canal shall cross any public road, it shall be the duty of said company, at the proper expense of the same, to make and keep good and sufficient bridges across the said canal, so as to prevent any inconvenience, in the usage of said road or roads by reason of said canal crossing the same, and that it shall be lawful for the Legislature of this State, at all times hereafter, to enact laws for the erecting and maintaining bridges across the said canal, at the expense of the said company, and to subject the said company to forfeitures, pains and penalties for not complying with such laws.

10 Bridges  
across the Can-  
al on public  
roads

*Passed at Dover, January 29, 1801.*

## II.

AN ADDITIONAL 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.*" 1811

[Section 1. repeals sections 17, 18, 19, 20. of the original act, by which certain benefits are reserved to the State.]

Section 3. Whenever and so long as the nett profits arising from the said tolls shall amount to fifteen per centum per annum, the Chesapeake and Delaware Canal Company shall lessen the rates of toll fixed by the said act, so that the same shall not exceed twelve per centum per annum.

11 Tolls,  
when lessen'd

*Passed at Dover, January 18, 1811.*

## CONSTABLES.

### AN ACT concerning Constables.

1829.

Section 1. There shall be constables for the several counties of this State respectively residing in the different Hundreds.

1 Residence  
of constables  
(4.)

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

2 Term of of-  
fice



3 vacancy constable become vacant 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.

4 Qualifications 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.

5 Limitation of appointment. 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.

6 Bond Sect. 2. 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—

7 condition *"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 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 indorsed 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—

8 Certificate indorsed *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 indorsed thereon, to be immediately delivered to the Recorder of deeds for the county for which such constable is appoint-*

9 Bond to be delivered to Recorder

ed, 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.

recorded—  
and filed

10 Bond not  
given in 5 days  
office vacated

Sect. 3. 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, 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 endeavors 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.

11 Powers &  
duties of con-  
stable

Sect. 4. 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.

12 Fee to the  
State

13 Neglect of  
constable or  
Cl'k of Peace  
to forfeit office

Sect. 5. The number and residence of the constables for the several counties of this State shall be as follows, that is to say ;

14 Constables

No. and resi-  
dence

15 New-Cas-  
tle county  
(18)

For New-Castle county there shall be two constables in Christiana Hundred ; two constables in New-Castle Hundred, one of whom shall reside in the town of New-Castle ; two constables in Appoquinimink Hundred, two constables in Red Lion Hundred, one of whom shall reside in Delaware City ; and one constable in each of the other Hundreds in said 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.

16 Kent coun-  
ty

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 Broadkill Hundred, one of whom shall reside in the village of Milton ; two constables in Lewes and Rehoboth

17 Sussex  
county

Hundred, one of whom shall reside in Lewestown, and two constables in each of the other Hundreds of said county.

18 other constables

Sect. 6. Besides the constables provided for New-Castle 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.

19 Constables appointed by Quarter Sessions

Sect. 7. 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; 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.

20 Vacancy

21 Governor

*Passed at Dover, January 24, 1829.*

## CONTRACTS.

### AN ACT about contracts and assumptions.

25 Geo. II.

1 to answer for another—under 40s—proved by party's oath

Section 1. All promises and assumptions, whereby any person or persons shall undertake to answer or pay for the default, debt or miscarriage of another, any sum under forty shillings, being proved by the oath or affirmation of the person or persons to whom such promise and assumption shall be made, are hereby declared to be good and available in law, to charge the party or parties making such promise and assumption.

2 of ex'or, &c. or to answer for another between 40s. & £10—how proved

Sect. 2. No action shall be brought, whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate; or whereby to charge any defendant, upon any special promise, to answer for the debt, default, or miscarriage, of another person, of the value of forty shillings, and not exceeding ten pounds, unless such promise and assumption shall be proved by the oath or affirmation of one credible witness, or some memorandum, or note in writing, shall be signed by the party to be charged therewith.

3 not valid, unless in writing

Sect. 3. No action shall be brought, whereby to charge any person or persons, upon any agreement made upon consideration of marriage or upon any contract, or sale of lands, tenements or hereditaments, or any interest in, or concerning them, or upon any agreement that is not to be performed within the space of one year

from the making thereof; or to charge any person or persons, whereby to answer for the debt, default or miscarriage, of another, in any sum of the value of ten pounds and upwards, unless the same shall be reduced to writing, or some memorandum or note thereof shall be signed by the party or parties to be charged therewith, or some other person thereunto by him or them lawfully authorized, except for goods, wares, and merchandizes sold and delivered, and other matters, which be and are properly chargeable (a) in an account; in which case the oath or affirmation of the plaintiff, together with a book regularly and fairly kept, shall be allowed in all cases to be given in evidence, in order to charge the defendant or defendants with the sum or sums therein contained.

4 book of account

## CONVEYANCES.

### AN ACT concerning conveyances.

1829

Section 1. 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.

1 Conveyance of land  
2 Legal estate passes with 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.

3 Deeds acknowledged—  
(9. 11. 12.)  
(Constitution 70)

attorney  
(13)

4 proved

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 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.

5 Deed of married woman (15)  
6 private examination  
(8. 9. 11. 12.)

7 her covenants

8 taking private examination

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 Justice of the Peace, before whom

9 Acknowledgment, &c certified

(a) It is established, that items of cash are not properly chargeable in an account. Smith & Brown vs. M'Benth, Adm'r. of Lowber. Com. Pleas, Kent, Nov. T. 1814.

the same is taken, in a certificate indorsed upon or annexed to the deed.

10 any county It shall not be necessary that such acknowledgment, proof or private examination be taken in the county, wherein the premises are situate.

11 Deed made out of State, acknowledged, &c. 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 country, 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 indorsed 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.

12 certified

5 Binney 300, 301

13 Letter of Att'y, to sell lands, &c acknowledged—&c. (15)

14 out of the State

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.

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 authorize the acknowledgment of a deed therefor.

15 married woman can not make

16 Recording of Deeds, &c.

(Recorder of Deeds)

17 within a year (21)  
18 Record evidence.

19 After Jan. 1, 1830, not recorded, un-

But nothing in this Act shall enable a married woman to make a letter of attorney.

Sect. 2. 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 indorsements 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 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 apply to an executor or administrator for the fulfilment of such contract.

less lodged in office within a year from date (20)

Sect. 3. 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.

20 Private examination of wife good, tho' deed not recorded

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, or such mortgagee or purchaser, when advancing the consideration, had notice of such deed. 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.

21 Deed not recorded within year not to avail against subsequent creditor, &c. unless, &c.

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 ; and if lands, tenements or hereditaments be sold, and a mortgage of the same or any part thereof made by the purchaser to the vendor, 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.

22 Mortgage date of its lien (execution 13, 14, 15, 16.)

24 for purchase money when preferred to other liens

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 indorsed 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

25 Defeasance or contract to reconvey--to be noted on conveyance

26 acknowledged, &c. & recorded within 60 days

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, although not under seal, may be acknowledged or proved in the same manner as a deed.

27 Recorder  
to note date of  
receiving

When a deed or other instrument proper to be recorded, with a certificate indorsed 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 indorsements 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.

28 & certify  
recording

The Recorder shall certify, 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.

29 receipts

30 Lands, &c  
in different  
counties

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.

31 Satisfaction  
of mortgage to be en-  
tered within  
60 days

Sect. 4. 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 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,

32 penalty for  
neglect

33 re-convey-  
ance

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 of the premises contained in such mortgage or conveyance in nature of a mortgage.

Sect. 5. 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.

Sect. 6. 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.

Sect. 7. 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:

*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.*

If the instrument acknowledged be not an indenture, the word *indenture* may be substituted for the 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.

*Passed at Dover, February 5, 1829.*

## CORONER.

### AN ACT concerning the office of Coroner.

1829.

Section 1. 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 empanel 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

34 words  
*grant, bargain and sell*,  
Binney 95,  
Co. Lit. 384,  
and n. 332, by  
Butler

35 Dower  
barred by  
deed made  
before May 1.  
1811

36 Justices  
taking ac-  
knowledgm't.  
must be toge-  
ther

37 Form of  
certificate

varied

1 Deaths to  
be inquired of

† (22)

2 Inquest  
(19)



- Oath      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.)*
- 3 proceeding      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 proper 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 :
- 4 Suspected persons
- 5 Examination
- depositions
- 6 when evidence
- 7 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.*
- 8 Witnesses      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 subpoena 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 person 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 :
- 9 duty to arrest suspected persons
- 10 crimes not bailable
- 11 Warrant of arrest

—county, ss. *The State of Delaware, to any constable of either*  
 (SEAL.) *of our counties. It having been found by an inquisition*  
*taken the — day of — A. D. one thousand eight hun-*  
*dred 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 accord-*  
*ing to law. Witness the hand and seal of the said Coroner, the —*  
*day of — 18 — — — Coroner.*

A person arrested by such warrant desiring to give bail shall, <sup>12 giving bail</sup>  
 upon his request, be carried before either of the Judges of the Su-  
 preme Court in the county, where he is arrested, for the determina-  
 tion of the question of bail according to the "Act concerning bail." (Bail 31-33)

The Coroner shall have power to commit any person for trial. <sup>13 Coroner</sup>  
 The commitment shall be by warrant under his hand and seal; <sup>may commit</sup>  
 and it may be according to the following form : <sup>for trial</sup>

— county, ss. *The State of Delaware to the Sheriff of said*  
 (SEAL.) *county. It having been found by (proceed as in the fore-*  
*going warrant to the words "we do therefore" and then*  
*proceed.) We do therefore herewith send to you 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.

The Coroner shall have authority to take recognizance of bail. <sup>14 He may</sup>  
 He shall admit to bail any person, who is bailable and offers suf- <sup>take recogni-</sup>  
 ficient bail. The recognizance may be according to the following <sup>zance of bail</sup>  
 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 recognizers and also  
 by the Coroner.

The Coroner shall require each witness, whose testimony he <sup>15 Recogni-</sup>  
 deems material, to enter into recognizance to the State to appear <sup>zance of wit-</sup>  
 at the proper court and give evidence. An entry in these words, <sup>nesses</sup>  
 "I am bound in recognizance to the State of Delaware in the sum of <sup>Form</sup>  
 — to appear at the next Court of † Oyer and Terminer and General † (17)  
 Gaol Delivery in — county to give evidence on behalf of the State  
 against —, dated the — day of —, 18—" signed by a wit-  
 ness 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.

16 Witnesses  
required to  
give surety  
[Bail 25--26]

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.”

17 When wit-  
nesses to ap-  
pear at Quar-  
ter Sessions

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.

18 Coroner to  
deliver inqui-  
sitions, &c.  
to the Att'y.  
General.

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 Gaol Delivery, which ever shall be first held in the county, immediately after the opening of the court.

19 Failure to  
appear on In-  
quest---penal-  
ty

If any person summoned by the Coroner to appear for the purpose of being impaneled 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.

20 body dis-  
interred—  
when

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.

Bac. Abr. Co-  
roner 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.

21 Bury'ng  
without in-  
quisition

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.

22 discretion  
of Justice

A Justice of the Peace shall have discretion to give such certificate.

23 Office of  
Coroner. va-  
cant

Sect. 2. 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.

Sect. 3. The Coroner shall execute the office 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.

24 Coroner to execute the office of Sheriff—when

Sect. 4. 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 a like copy to the Judge of said Court in the county, where the commitment is.

25 Sh'ff to send copies of commitments in capital cases

*Passed at Dover, February 5, 1829.*

## CORPORATIONS.

### AN ACT for expediting suits against Corporations.

1829

Section 1. 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 subpoena, 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 subpoena, 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 subpoena 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 subpoena 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 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

1 Suits against corporation

2 Process served

corporation; and such service or notice, when proved, shall be sufficient notice to such corporation.

8 When the president, managers &c reside out of the State

Sec. 2. 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 indorsed 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.

4 Notice of rules, &c. how served

Sec. 3. 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 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.

5 Tolls of the Chesapeake & Del. canal, may be attached—when

Sec. 4. 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

6 Injunction against overflowing lands

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.

Sect. 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 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.

7 Stock may be attached

8 and sold

[14]

9 notice of sale

[Fees 12]

10 where the debtor resides out of the county

11 Copy of the attachment to be left with the president, &c. of the company

12 after which an assignment of the stock shall be void

13 right to stock under such sale

14 No order of sale till final judgment

15 Cashier or clerk to give to officer certificate of number of shares

Sect. 6. 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.

16 Money from sale of stock applied

Sect. 7. 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.

*Passed at Dover, February 10, 1829.*

## COSTS IN CIVIL SUITS.

1829

### AN ACT concerning costs in civil suits.

1 Costs in court of law on Judgment [5]

In a court of law whether of original jurisdiction or of error, upon a discontinuance, non pros, nolle prosequi, retraxit or nonsuit 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.

2 costs on rules

3 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.

4 costs before a Judge, &c. out of court

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 Chancellor may make order for the payment, as he shall consider just, and enforce obedience by attachment.

5 This act not to contravene other acts—[Justices of the Peace 156]

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.

*Passed at Dover, January 19, 1829.*

## COSTS IN CRIMINAL CASES.

101

AN ACT concerning costs in criminal cases.

1823

-No person, who shall hereafter upon the trial of any issue or traverse joined upon any indictment, be acquitted by a jury, shall in any case be liable to pay the costs of prosecution; but every person so acquitted, so far as concerns the charge or charges contained in such indictment, shall upon acquittal be discharged without the payment of costs.

Acquitted not  
liable for costs

*Passed at Dover, January 31, 1823.*

## COURTS.

### I.

AN ACT for the establishing courts of law and equity within this government.

Between  
1726 & 1736

Section 1. There shall be a Court, styled, *The General Quarter Sessions of the Peace and Gaol Delivery*, in each county of this government, [And there shall be a competent number of Justices in every of the said counties, nominated and authorised by the Governor, or Lieutenant Governor for the time being, by commission under the broad seal of this government; which said Justices, or any three of them shall and may hold the said General Sessions of the Peace and Gaol delivery according to law, and as fully and effectually as any Justices of the Peace, Justices of the Assize, and Justices of Oyer and Terminer, or of Gaol Delivery, may or can do.]

1 Gen'l. Qu'r.  
Sessions of  
the Peace

Altered [Con-  
stitution 65-  
84—35]

Sect. 2. The said Justices of the Peace of the respective counties, or any three of them, may, pursuant to their said commissions, hold special and private Sessions, when and as often as occasion shall require; and the said Justices, and every of them, shall have full power and authority, in or out of Sessions, to take all manner of recognizances and obligations to the King, as any Justices of the Peace of Great Britain may or can, or usually do: but in case any person or persons shall forfeit his or their recognizance of the peace, behaviour or appearance, for any cause whatsoever, then the Justices of the said Court of Quarter Sessions, shall make a record of every such default or cause of forfeiture, and issue Writs of *scire facias*, and all such other process as shall be needful for the recovery of the said forfeitures.

2 Recogni-  
zances, &c.

3 recognizan-  
ces forfeited—  
proceedings

Sect. 4. And to the end that persons indicted or outlawed for felonies or other offences in one county or town corporate, who dwell, remove, or be received into another county or town corporate, may be brought to justice the said Justices or any of them shall and may direct their writs or precepts, under the seal of the proper county, to which they belong to all or any of the sheriffs or other officers of the said counties or towns corporate within this government, where need shall be, to take such persons indicted or outlawed; and it shall and may be lawful to and for the said Justices, and every of them, to issue forth *subpœnas* and other warrants, under their respective hands and seals, into any county or place of this government,

4 Process, in  
one county,  
may be direc-  
ted to officers  
of another  
[bail 17]



for summoning or bringing any person or persons to give evidence in or upon any matter or cause whatsoever, now or hereafter examinable, or in any wise triable before them, or any of them, under such pains and penalties as by *subpoenas* or warrants of that kind usually are or ought by law to be granted or awarded.

5 [Constitution 87 & n]

Sect. 5. If any person or persons shall find him or themselves aggrieved with the judgment of any of the said Courts of General Quarter Sessions of the Peace and Gaol Delivery, or any other courts of record within this government, it shall and may be lawful to and for the party or parties so aggrieved, to have his or their writ or writs of error which shall be granted them of course, in manner as other writs of error, [to be granted and made returnable to the said Supreme Court of this government.]

Altered

6 Common  
Pleas  
Altered  
[Constitution  
65-68]

Sect. 15. A competent number of persons shall be commissioned by the Governor, or his Lieutenant for the time being, under the broad seal of this government, who shall hold and keep a court of record in every county of this government, which shall be styled and called, the County Court of Common Pleas; which Justices, or any three of them (according to the tenor and direction of their commissions) shall hold Pleas of Assize, *scire facias*, replevins, informations and actions upon penal statutes, and hear and determine all and all manner of pleas, actions, suits and causes, civil, real, personal and mixt, according to the laws and constitutions of this government, as fully and amply to all intents and purposes, as the Justices of the King's Bench, Common Pleas, and Exchequer in England, or any of them, may or can do.

7 Writs of in-  
quiry

Sect. 19. And to prevent the excessive charges that have sometimes arisen upon executing writs of inquiry for damages: the Justices who give any interlocutory judgment, shall (at the motion of the plaintiff or his attorney in the action where the judgment is given) make an order in the nature of a writ of inquiry, to charge the jury attending at the same or next court after such judgment is given, to inquire of the damages and costs sustained by the plaintiff in such action, which inquiry shall be made and evidence given in open court, and after the inquest have considered thereof, they shall forthwith return their inquisition under their hands and seals, whereupon the Court may proceed to judgment, as upon inquisitions of that kind returned by the sheriffs.

8 Testatum  
Executions  
[Constitution  
83]

Sect. 20. It shall and may be lawful to and for the Justices of the said respective Courts of Common Pleas within this government, to award a *Testatum* Execution in all cases where the same is needful, and is or ought to be done by the practice and course of the laws of England, and to amerce the sheriffs or other officers neglecting or refusing to execute and make return of such writ or writs, according to the direction of the said writs.

9 Courts of  
Equity  
Altered [Con-  
stitution 65  
76]  
10 jurisdic-  
tion

Sect. 21. There shall be a Court of Equity, [held by the Justices of the said respective county Courts of Common Pleas;] which said Justices, or any three of them, within the limits of their commissions and authorities to them appointed as is aforesaid, shall have full power, and are hereby empowered and authorized, to hear and decree all such matters and causes of equity as shall come before them in the said Courts, where the proceedings shall be as

heretofore by bill and answer, with such other pleadings as are necessary in Chancery Courts, and proper in these parts, with power also for the said Justices of the respective Courts of Equity, to issue forth all manner of *subpœnas*, and all other process as may be needful to oblige and force defendants to answer suits there, as also to award commissions for taking answers and examining witnesses, and to grant injunctions for staying suits in law, and stopping wastes, as there may be occasion, observing, as near as may be the rules and practice of the High Court of Chancery in Great Britain, with powers to make orders and award all manner of process, and do all other things necessary for bringing causes to hearing, and to force obedience to their decrees in equity, which may be by imprisonment of bodies, or sequestration of lands, and admit bills of reviver, as the case may require.

11 powers

(Boundaries  
11. Dower  
Partition &  
Waste  
11. Idiots &  
Lunatics)

Sect. 22. And if any defendant or defendants in any suit, which shall be commenced against them in one of the said counties, shall, after he or they are served with a *subpœna*, or other process, remove into any other county of this government, all process necessary to bring such defendants to answer, and all commissions for taking of their answers and examining witnesses, with all other process necessary to bring such causes to a hearing, shall and may be awarded out of the court where those causes or suits shall be first commenced, into any other county of this government, as the case may require.

12 process in-  
to different  
counties

Sect. 23. *Provided always*, That no *subpœnas* or other process for appearance, shall issue out of any of the said Courts of Equity, till the bill is filed with the proper officer, except bills for injunctions to stay wastes or suits at law.

13 No process  
before bill  
filed  
except in-  
junction

Sect. 25. *Provided also*, That nothing herein contained shall give the said Justices any power or authority to hear, decree or determine in equity, any matter, cause or thing, wherein sufficient remedy may be had in any other court or before any other magistrate or judicature in this government, either by the rules of the common law, or according to the tenor and directions of the laws of this government, but that when matters determinable at common law shall be brought before them in equity, they shall refer or remit the parties to the common law; and when matters of fact shall happen to arise upon their examination or hearing of the matters and causes to be heard and determined in the said Court, then, and in every such case, they shall order the matter of fact to issue and trial at the Court of Common Pleas for the proper county where the fact ariseth, before they proceed to sentence or decree in the said Court of Equity.

14 when  
there is remedy  
at common  
law15 issues of  
fact

Sect. 26. There may be a competent number of persons of an honest disposition, and learned in the law, admitted by the Justices of the said respective courts, to practice as Attornies there, who shall behave themselves justly and faithfully in their practice, and before they are so admitted, shall take the following qualification, (*viz.*)

16 Attorneys  
at law

*THOU shalt behave thyself in the office of an Attorney within the court according to the best of thy learning and ability, and with all good fidelity as well to the court as to the client: Thou shalt use no falsehood, nor delay any person's cause through lucre or malice.*

17 qualifica-  
tion

18 misbehaviour

19 powers

Sect. 27. *And if they misbehave themselves therein, they shall suffer such penalties and suspensions as Attornies at Law in Great Britain are liable to in such cases. By which Attornies actions may be entered, and writs, process, declarations and other pleadings; and records in all such actions and suits as they shall respectively be concerned to prosecute or defend from time to time, may be drawn, and with their names and proper hands signed; which said Attornies, so admitted, may practice in all the courts of this government, without any further or other licence or admittance.*

## II.

### 1760 AN ACT for the better regulation of the Supreme Court within this government.

20 Supreme Court

Altered  
(Constitution  
65. 67.)

21 powers of  
Judges  
(Constitution  
69. 70.)  
(Habeas Corpus)

22 powers of  
court

23 process

Section 2. The Supreme Court of this government shall be held and kept twice in every year in each county of this government; which said court shall be called and styled, the Supreme Court of the government of the counties of New-Castle, Kent and Sussex, on Delaware. [*And there shall be four persons of known integrity and ability commissioned by the Governor for the time being, by several distinct patents, or commissions, under the Great Seal of this government, to be Judges of the said court; one of whom shall be distinguished in his commission by the name of Chief Justice.*] And each of the said Judges shall have full power and authority, when and as often as there shall be occasion, to issue forth writs of *habeas corpus*, *certiorari*, and all remedial writs, or other process necessary for bringing the causes in the said court to trial, and for carrying the judgments or decrees of said court into execution.

Sect. 3. The said Judges, or any two of them, shall have full power and authority to hold the said court; and to examine, correct and punish, the contempts, omissions, neglects, favours, corruptions and defaults, of all, or any, of the Justices of the Peace, Sheriffs, Coroners, Clerks, and other officers, within this government; and also shall award process for levying all such fines, forfeitures and amerciaments, as shall be taxed, imposed or set, in the said Supreme Court, or estreated there; and generally shall minister justice to all persons, and exercise the jurisdictions and powers hereby granted them, concerning all and singular the premises, according to law and equity, as fully and amply to all intents and purposes whatsoever, as the Justices of the King's Bench and Common Pleas, at Westminster, or the Chancellor of England, may or can do.

Sect. 5. All the said writs shall be granted of course, and shall bear test in the name of the Chief Justice for the time being; but if he be the plaintiff or defendant, in the name of one of the other Justices, and shall be sealed with the judicial seal of the said court, and made returnable to the next court after the date of such writ.

Sect. 7. The said Judges of the said Supreme Court, or any two of them, shall have power, and are hereby authorized and em-

powered, from time to time, when there shall be occasion, to deliver the gaols of all persons which now are, or shall hereafter be committed for treasons, murders, and such other crimes as by the laws of this government now are, or hereafter shall be, made capital, or felonies of death; and for that end, from time to time, to issue forth such necessary precepts and process, and force obedience thereunto, as Justices of Assize, Justices of Oyer and Terminer and Gaol Delivery, may or can do in the realm of Great Britain.

24 Oyer and Terminer (Constitution 14. 67)

Sect. 12. The Attornies at Law, to be hereafter admitted to practise in the said Supreme Court, shall take the same qualifications, and have the same privileges as they would have done, or might have had, by the laws of this government, if they had been admitted to practise in the Supreme Court before (a) the making of this law.

Attorneys at Law

*Passed April 28, 1760.*

### III.

#### AN ACT to regulate the courts in this State.

1793

[By section 1, the terms of the Supreme Court and of the Court of Common Pleas, and by section 2, the terms of the Court of Chancery, are appointed in the several counties.]

Supplied and repealed (108-112)

Section 3. The Chancellor and Justices of the respective courts aforesaid, shall and may, from time to time, as they shall judge it convenient and necessary, adjourn over the terms aforesaid for the purpose of trying causes, receiving motions, hearing arguments, laying rules, and doing all other business necessary for the expediting and ending suits.

Adjournment

Sect. 6. The Justices of the Supreme Court, and Court of Common Pleas, shall respectively have power to make regulations for the returns of all judicial writs, entering rules thereon, and on the sheriff, filing declarations and other subsequent pleadings, in vacation, and all other rules necessary for the bringing forward and expediting the trial of causes and finishing executions.

24 Power to make rules

*Passed June 14, 1793.*

### IV.

#### AN ACT to regulate certain proceedings in the Court of Chancery; 1806 in the Orphans Court, [and in the Registers Court; and to compel Justices of the Peace to furnish copies of their records.]

Section 1. After bill filed, and the appearance of the defendant or defendants, entered in any suit commenced in the Court of Chancery, all the subsequent pleadings and proceedings in every

25 Practice in the Court of Chancery & Orphans Court

(a) The preceding Act (1.) established a Supreme Court; and so much of that Act as related to said court is by this Act repealed; so that by this section, sections 26 & 27 of the preceding Act (16.17.18.19.) are adopted as to Attorneys at Law in the Supreme Ct.

26 Power to  
make rules

such suit, to the making the decree, shall be regulated and enforced by rules, laid or such process as the Chancellor may award and order, and for the non-compliance with any such rules, decrees may be made, bills may be dismissed, or be taken *pro confesso* according to the circumstances of the case; and the return of all process shall be enforced by rules, and by such subsequent process and proceedings as may insure a compliance with such rules, and the execution and return of such process. And it shall and may be lawful for the Chancellor to make all such rules and orders as may be necessary for the better regulating the practice of the Court of Chancery, and of the Orphans Court, for the return of all writs, commissions and other proceedings in said courts respectively, entering rules thereon, and on the sheriffs, registers and clerks, filing all pleadings subsequent to the bill, and all other regulations necessary for the bringing forward and expediting the hearing of causes and for compelling a compliance with the decrees and sentences of said courts.

27 Sequestration

Sect. 2. No writ of proclamation or commission of rebellion shall be issued; but after one or more writs of attachment or distringas, and return thereto, the court may, on motion, award a sequestration according to the nature and circumstances of the case. (a)

a (92)

28 Defendant  
not found to  
be served  
with process  
issued 30 days  
before return  
(43)

Sect. 3. If in any suit which shall hereafter be commenced in the Court of Chancery, any defendant or defendants against whom any subpoena or other process shall issue, which shall have been delivered to the sheriff thirty days before the return thereof, shall not cause his, her or their appearance to be entered upon such process within such time, and in such manner as, according to the rules of the Court, the same ought to have been entered in case such process had been duly served; and an affidavit or affidavits shall be made to the satisfaction of the court, that such defendant or defendants is or are out of the State, or that upon inquiry at his, her or their usual place of abode, he, she or they could not be found, so as to be served with such process, and that there is just ground to believe that such defendant or defendants is or are gone out of the State, or has absconded to avoid being served with the process of such court; then and in such case the said court may

29 Affidavit

30 Order for  
appearance

make an order directing such defendant or defendants to appear at a certain day therein to be named; and a copy of such order shall, within thirty days after such order made, be inserted in such newspaper or newspapers, published in this State, and in such other newspapers as the Chancellor may direct, and shall be continued in such newspapers for the space of three months next after its first publication; and a copy of such order shall within the said thirty days be posted up in the office of the Register of the Court of Chancery, and at the Court House door of the county in which the order was made. And if the said defendant or defendants shall not appear within the time limited by such order, or within such further time as the court shall appoint, then on proof made of such publication of such order as aforesaid, the court being satisfied of the truth thereof may order the plaintiff's bill to be taken *pro confesso*, and make such decree thereon as shall be thought just; and may thereupon issue process to compel

31 publication

32 bill pro  
confesso

the performance either by immediate sequestration of the real and personal estate and effects of the party so absenting if any such can be found, or such part thereof as may be sufficient to satisfy the demands of the plaintiff or plaintiffs in the said suit, or by causing possession of the estate or effects demanded by the bill to be delivered to the plaintiff or plaintiffs or otherwise as the nature of the case shall require; and the court may likewise order such plaintiff or plaintiffs to be paid and satisfied his, her or their demands out of the estate or effects so sequestered according to the true intent and meaning of such decree, the plaintiff or plaintiffs first giving security in such sum as the court shall think proper, to abide such order touching the restitution of such estate or effects as the court shall think proper to make concerning the same, upon the defendant or defendants appearance to defend such suit, and paying such costs to the plaintiff or plaintiffs as the court shall order; but in case such plaintiff or plaintiffs shall refuse or neglect to give such security as aforesaid, the court shall order the estate or effects so sequestered, or whereof possession shall be decreed to be delivered, to remain under the direction of the court either by appointing a receiver thereof or otherwise, as to the court shall seem meet, until the appearance of the defendant or defendants to defend such suit, and his, her or their paying such costs to the plaintiff or plaintiffs as the court shall think reasonable, or until such order shall be made therein as the court shall think just.

33 decree & execution (37. 38. 39. 40. 41. 42.)

34 Security for restitution

35 Defendant refusing to enter appearance—Court may appoint Solicitor

Sect. 4. If any defendant or defendants, by virtue of any process issuing out of the Court of Chancery, shall be brought into court, and shall refuse or neglect to enter his, her or their appearance according to the rules or method required by the said court, or to appoint a solicitor of such court to act on his, her or their behalf respectively, such court may appoint a solicitor of the court to enter an appearance for such defendant or defendants respectively, and such proceedings may thereupon be had in the cause as if the party had actually appeared.

Sect. 5. If any person against whom any such decree shall be made, upon refusal or neglect to enter his, her or their appearance or to appoint a solicitor to act on his, her or their behalf, shall be in custody or forth coming, so that he, she or they may be served with a copy of such decree, then he, she or they shall be served with a copy thereof before any process shall be taken out to compel the performance thereof.

36 Copy of decree when served

Sect. 6. If any decree shall be made in pursuance of this act, against any person or persons, being out of this State, or absconding in manner aforesaid, at the time such decree is pronounced, and such person or persons shall within five years after the making such decree return or become publicly visible, then and in such case he, she or they shall likewise be served with a copy of such decree, within a reasonable time after his, her or their return or public appearance shall be known to the plaintiff or plaintiffs; and in case any defendant or defendants against whom such decree shall be made, shall within five years after the making such decree happen to die before his or her return into this State, or appearing openly as aforesaid, or shall die within the time last

37 Defendant returning within 5 years—to be served with the decree

38 in case of his death within that time, decree served on heirs, &c.

before mentioned in custody, before his or her being served with a copy of such decree, then his or her heirs and executors or administrators, if such defendant shall have any real estate sequestered or whereof possession shall have been delivered to the plaintiff or plaintiffs, and such heir may be found, and if there be such executor or administrator, or if such heir be a *feme covert*, *infant non-compos mentis*, the husband, guardian or trustee of such heir respectively; or if the personal estate of such defendant be sequestered, or possession thereof delivered to the plaintiff or plaintiffs, then his or her executor or administrator, if any such there be, shall be served with a copy of such decree within a reasonable time after it shall be known to the plaintiff or plaintiffs that the defendant is dead, and who is his or her heir, executor or administrator, or where he, she or they respectively may be served therewith.

39 not appearing in year after service, decree confirmed

Sect. 7. If any person or persons, so served with a copy of such decree, shall not within one year after such service appear and petition to have the said cause re-heard, such decree so made as aforesaid shall stand absolutely confirmed against the person and persons so served with a copy thereof, his, her and their respective heirs, executors and administrators, and all persons claiming or to claim by, through, from or under him, her or them, or any of them, by virtue of any act done, or to be done, subsequent to the commencement of such suit.

40 appearing may be heard, &c.

Sect. 8. If any person so served with a copy of such decree, shall within one year next after such service, or if any person not being so served shall within five years next after the making such decree, appear in court and petition to be heard with respect to the matter of such decree, and shall pay down or give security for the payment of such costs as the court shall think reasonable in that behalf; the person or persons so petitioning, his, her or their respective representatives, or any person or persons claiming under him, her or them respectively by virtue of any act done before the commencement of the suit, may be admitted to answer the bill exhibited, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree and execution may be had thereon as there might have been in case the same party had originally appeared, and the proceedings had then been newly begun, or as if no former decree or proceedings had been in the same cause.

41 Persons not petitioning in five years

Sect. 9. If any person or persons against whom such decree shall be made, his, her or their heirs, executors or administrators shall not within five years next after the making such decree, appear and petition to have the cause re-heard, and pay down or give security for the payment of such costs as the court shall think reasonable in that behalf, such decree made as aforesaid shall stand absolutely confirmed against the person and persons against whom such decree shall be made, his, her or their heirs, executors, and administrators, and against all persons claiming or to claim by, from or under him, her or them or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit; and at the end of such five years it shall and may be

42 After five years the

lawful for the Court to make such further order as shall be just and reasonable according to the circumstances of the case.

court may  
make further  
order  
43 Cases, to  
which this  
Act does not  
extend

Sect. 10. This act shall not extend or be construed to extend, to warrant or make good any proceeding against any person out of the State, unless it shall appear to the satisfaction of the Court by affidavit or affidavits before the making of such decree, that such person had been a resident in the State within one year next before the subpoena in such suit issued against such person; or unless it shall appear by the return of the process that such person had been duly served therewith in the State; or unless the said suit shall be commenced against any person or persons out of the State, for the obtaining a writ or writs of injunction, for staying a suit or suits at law, or to be relieved against any judgment or proceedings at law, obtained or had by any such person out of the State; or unless the said suit shall be commenced against any person seized or possessed of any estate, real or personal within the State; or unless the said suit shall relate to, or concern, or affect any lands, tenements, goods, chattles, rights, credits or other real or personal estate within the State, or any contract made or to be done or performed within the State.

Sect. 11. It shall and may be lawful to and for any person or persons under the age of twenty-one years, having estates in lands, tenements or hereditaments, in trust only for others, by direction of the Court of Chancery, signified by an order made upon hearing all parties concerned on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the guardian or guardians of such infant or infants, to convey and assure any such lands, tenements or hereditaments in such manner, as the said Court of Chancery shall by such order so to be obtained direct, to any other person or persons, and such conveyance and assurance, so to be had and made as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infant or infants were at the time of making such conveyance or assurance of the full age of twenty-one years, any law, custom or usage to the contrary notwithstanding.

44 Order for  
infant--trust-  
tees to con-  
vey  
(45. 46.)

Sect. 12. All and every such infant or infants being only trustee or trustees as aforesaid shall and may be compelled, by such order, so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances in like manner, as trustees of full age are compellable to convey or assure their trust estates.

45 compulso-  
ry

Sect. 13. This Act shall not extend, or be construed to extend, to any case which is already provided for by an act of the General Assembly, entitled, "An Act to empower executors and administrators within this government, by leave of court, to convey lands contracted for with their decedents," passed in the seventeenth year of George the second.

46 Cases in  
which ex'ors  
or adm'ors  
have power

Sect. 14. The Registers of the Court of Chancery in each of the counties of this State shall before the first day of the next summer term, respectively, procure a new seal of silver, copper or steel to be made of the diameter of one inch and an half at least; and cause the same to be engraven with the arms of the State of Delaware, or parts of the same, with a motto or inscription to describe the

47 Seal



office to which the seal belongs; which said seals shall on the first day of the next summer term in each county respectively, and afterwards be taken, adjudged and deemed the seals of the Court of Chancery in each county respectively, and shall be used and fixed to all writings and copies to which a seal of office ought to be affixed.

48 Seal to be delivered to successors

who shall reimburse the cost

Sect. 15. The said Registers, their executors and administrators shall deliver the said seals to their successors in office respectively, from time to time, whole and undefaced, common wear excepted, under the penalty of one hundred dollars, to be recovered by the person who shall hereafter be lawfully appointed to hold the said office, by an action of debt; and that the successors in said office respectively shall upon the delivery of the said seals in manner aforesaid, reimburse and pay to the former Register, his executors or administrators the sums of money the said seals originally cost; which said original cost shall be by order of the Chancellor, entered among the records of said court at the next summer term.

49 Registers to give security

Condition

50 in trust

51 Proceedings

Sect. 16. *And whereas* divers sums of money are frequently ordered or decreed to be paid into court by the Chancellor, and when paid in, are deposited with the Register of that court, subject to the further order or decree of the Chancellor:—every Register of the Court of Chancery now in commission, shall at the next Court of Chancery to be held in the respective counties after the first day of July next; and every Register of the Court of Chancery hereafter appointed and commissioned shall at the next term succeeding his appointment, enter into a recognizance to the State of Delaware before the Chancellor, with two or more good and substantial freeholders of the county, to be approved of by the Chancellor, jointly and severally, in the sum of three thousand dollars lawful money of the United States of America; upon condition *that if he the said Register shall upon request to him made for that purpose, well and truly pay or cause to be paid to the several suitors and parties interested, their executors or administrators, according to the order or decree of the Chancellor for the time being all and every sum and sums of money to them respectively ordered or decreed to be paid by the Chancellor, which shall have been deposited or paid into court by the authority, order or decree of the Chancellor, and shall and do from time to time and at all times during his continuance in office well and faithfully execute the said office and perform in every thing the duty in him reposed, then the said recognizance to be void, otherwise to be and remain in full force and virtue; which said recognizance shall be and is hereby declared to be, in trust to and for the use and benefit of every person and persons, their executors or administrators to whom any sum or sums of money which shall have been deposited or paid into the Court of Chancery by the authority, order or decree of the Chancellor, shall be ordered or decreed to be paid by the Chancellor; and the said recognizance shall be in trust to and for the use and benefit of any person or persons who shall be injured by any breach or neglect of duty in such Registers respectively; whereupon the party grieved may proceed by petition to the Chancellor against the said respective Registers and their sureties, jointly or severally; and after hear-*

ing the parties concerned, upon reasonable notice to appear and answer to the said petition, or if after such notice the person or persons against whom such petition is preferred, shall neglect or refuse to appear and answer thereto, the Chancellor may proceed as if such person or persons had appeared and answered thereto, and in each case make such order or decree as may be just and right, and may force obedience to such order or decree by imprisonment of body, or sequestration of lands and goods, as fully as in any case whatsoever cognizable in said court : *Provided*, That if any breach or neglect of duty shall be alleged in any such petition whereof sufficient evidence shall not appear upon the records, proceedings or process of the said court. for the decision thereof, then and in such case the said court shall order such matter to issue and trial in the Supreme Court or in the Court of Common Pleas in the county where the matter ariseth, before any final order or decree shall be made in the Court of Chancery; and the said recognizances so to be proceeded on, are hereby declared still to remain cautionary for the satisfaction of all others who may be grieved by the said Registers respectively as aforesaid.

52 Issue triable at law

Sect. 23. The Chancellor shall cause the said recognizances respectively entered into, by the Registers of the Court of Chancery [and by the clerks of the Orphans Court,] to be recorded in the office for recording of deeds in the respective counties, and the Recorder is hereby directed to record the same without fee or reward when required thereto, by the Chancellor : and the copies or exemplifications of such recognizances so enrolled, being certified by the Recorder under his hand and seal, (which the Recorder is hereby required to affix thereto,) shall be allowed in all courts of law, where produced, and are hereby declared and enacted to be as good evidence, and as valid and effectual in law as the original recognizances, and the said copies or exemplifications may be sued, pleaded and made use of accordingly.

53 Recognizances recorded

54 Copies evidence

*Passed at Dover, February 1, 1806.*

## V.

### AN ACT about defalcation.

13 Geo. II.

For the avoiding numerous suits at law within this government.

Section 1. If two men, dealing together, be indebted to each other, upon bonds, bills, bargains, and the like, the defendant may, in his plea and answer to the plaintiff's declaration, acknowledge the debt which the plaintiff demands from him, and defalk what the plaintiff is indebted to him the said defendant ; *Provided always*, That if the plaintiff's demand be a specialty, the defendant shall prove the debt to be defalcated, by the evidence of one credible person at the least, or by his or her book regularly kept, with fair entries.

55 Set-off

(contracts. 4)

Sect. 3. If the defendant doth prove, that before suit brought, he tendered to the plaintiff his, the said defendant's, account against him, and so much money as shall, upon trial, be found to be due to the plaintiff, the plaintiff shall suffer non-suit, and pay costs.

56 Tender of account and balance

57 Rule of reference

58 report and judgment, or scil. fa.

Sect. 4. Where the plaintiff and defendant having accounts against one another, shall, by themselves, or their attorneys or agents, consent to a rule of court for the referring the adjustment thereof to indifferent persons, mutually chosen, or appointed by the Justices in open court, the award or report of such referees being made according to the reference, and approved by the court, shall be deemed and taken, to be as available in law as a verdict of a jury; and the party or parties to whom any sum of money shall be awarded or found to be due, shall have judgment, if he be plaintiff, and a *scire facias*, if he be defendant, and have an execution for the same, with costs of that action, any law, custom or usage to the contrary notwithstanding.

## VI.

1811 AN 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 for appeals from decrees in equity.]

Whereas it often happens that causes, suits and matters of controversy are referred by consent of parties, and rule of court to arbitrators chosen by the parties, or appointed by the Justices in open court, or appointed by the clerk or prothonotary in vacation, in which for the want of a writ, declaration or plea, or because there is no issue joined, or on account of some other defect in matter of form or substance, writs of error have been brought to reverse the judgments recovered in such cases.

59 Judgment, in suits referred, not reversible for want of narr. &c.

Section 1. In all cases wherein any cause, suit or matter of controversy hath been, or hereafter shall be referred by the consent of parties and by a rule of court, by virtue of any Act or Acts of the General Assembly of this State, or according to the rules of the common law, or according to any form used by the parties, and judgment hath been or hereafter shall be recovered in any such cause, suit or matter of controversy so referred, no such judgment shall be reversed upon any writ or writs of error hereafter to be brought for want of any writ, declaration, plea, joinder in issue, or on account of any other defect. mis-entry or error in the proceedings had in such suit; *Provided*, the report made or hereafter to be made in any such cause, suit or matter of controversy so referred or to be referred, hath been or shall be duly sworn or affirmed to, according to the form of the Acts of the General Assembly in such case made and provided, and be approved by the court.

60 provided report sworn to, &c.

61 Grand Jurors at Quarter Sessions

Sect. 2. And for lessening the expense and obtaining the returns of impartial juries;—the respective sheriffs of the several counties within this State, shall at least ten days before the Court of General Quarter Sessions of the Peace and Gaol Delivery to be holden in each county in the spring of the year, yearly and every year, without any writ of *venire facias juratores*, summon in writing, twenty-four sober, substantial and judicious freeholders, lawful

men of fair characters and inhabitants of his bailiwick, to serve as grand jurors at the then next Court of General Quarter Sessions of the Peace and Gaol Delivery: and the said respective sheriffs shall immediately on the opening of the said court in the respective counties, return to the said courts respectively, a panel of such grand jurors containing the christian and surnames and places of abode of such grand jurors; which said persons or a sufficient number of them, so summoned and returned, shall be and remain the standing grand jury for that year, notwithstanding their being sworn or affirmed at each respective court to attend that present service only; and the Justices of the respective Courts of General Quarter Sessions of the Peace and Gaol Delivery are hereby required to cause to be administered to the said jurors every session of the said court during the said year, the oaths and affirmations usual for the faithful discharge of their duty and trust: and in case a sufficient number of the persons so summoned, shall not appear, at any such session of the said court, the said court shall thereupon make an order on the sheriff of the county for filling up the said jury, and the said sheriff shall thereupon immediately summon and return *tales de circumstantibus*, and the persons thereupon summoned and returned, shall serve as grand jurors at such session of the said court.

62 to be sworn  
each session

63 tales de  
circumstanti-  
bus

Sect. 3. No person shall be obliged to serve as a grand juror for two years successively in any of the said counties.

64 No person  
obliged to  
serve 2 years  
[103]

Sect. 4. Whenever the Justices of the Court of Oyer and Terminer and General Gaol Delivery, or any two of them, shall issue their writ or precept to the sheriff of any county of this State, for summoning the Justices of the Peace, coroner, constables, jurors and other persons bound to attend the said court, the said sheriff shall be commanded in the said writ or precept to summon in writing ten days at least before the day appointed in the said writ or precept for the holding the said court, twenty-four sober, substantial and judicious freeholders, lawful men of fair characters and inhabitants of his bailiwick, to serve as grand jurors at the said Court of Oyer and Terminer and General Gaol Delivery, and forty-eight sober, discreet and judicious freeholders, lawful men of fair characters and inhabitants of his bailiwick, to serve as petit jurors at the said Court of Oyer and Terminer and General Gaol Delivery; and the said sheriff is hereby required and commanded to summon in writing ten days at least before the day appointed in the said writ or precept for the holding the said court in any of the said counties, the said grand jurors and petit jurors; and immediately on the opening of the said court, to return to the said court a panel of the said grand jurors, and a distinct and separate panel of the said petit jurors, and each of the said panels shall contain the christian and surnames, additions and places of abode of the said grand jurors and petit jurors; and such persons so summoned and returned, shall be the grand jurors and petit jurors for that present service.

65 Oyer and  
Terminer  
Grand Jurors

66 petit jurors

67 Duty of  
sheriff

Sect. 5. In case any indictment or indictments for any capital offence or offences shall have been found in the Court of General Quarter Sessions of the Peace and Gaol Delivery, in such county, against any person or persons, and the said indictment or indict-

68 When  
Grand Jury  
not summoned  
at Court of  
Oyer & Term.

ments shall have been removed by a writ or writs of *certiorari*, *habeas corpus*, or by any other lawful means or process whatsoever, from the said Court of General Quarter Sessions of the Peace and Gaol Delivery before the said Justices of the Court of Oyer and Terminer and General Gaol Delivery, and there shall not be then any person in gaol or on bail, charged with any capital offence, against whom no indictment hath been found, so that there be no necessity for a grand jury, at any such Court of Oyer and Terminer and General Gaol Delivery, and there shall be no occasion to prefer to a grand jury, at such Court of Oyer and Terminer and General Gaol Delivery, any indictment or indictments, it shall and may be lawful for the said Justices of the Court of Oyer and Terminer and General Gaol Delivery, or any two of them, to omit in the said writ or precept, the command to the sheriff to summon twenty-four freeholders as aforesaid, to serve as grand jurors, as aforesaid.

69 Penalty on  
Grand Jurors  
not attending

(103)

Sect. 6. If any grand juror, summoned as herein before is directed, to appear at any Court of Oyer and Terminer and General Gaol Delivery, or at any Court of General Quarter Sessions of the Peace and Gaol Delivery, shall neglect or refuse to give his attendance as herein before is required, or to answer at every time his name shall be called by order of the court, which he is bound to attend, he shall for every time he shall so neglect or refuse to give his attendance or to answer as aforesaid, be fined by the said courts respectively in any sum not exceeding ten dollars: which said fine shall be levied by the sheriff by an order of the Justices of said court immediately after the next ensuing term of the Supreme Court or of the Court of General Quarter Sessions of the Peace and Gaol Delivery, as the case may be, and afterwards paid to the treasurer of the county, for the use of the said county, where such juror inhabits: *Provided*, that if any such defaulting person shall prove to the satisfaction of the Supreme Court or of the Court of General Quarter Sessions of the Peace and Gaol Delivery, at their next ensuing term after such default, by affidavit made by himself or by any credible person, and duly filed among the records of said court, that his non-attendance was occasioned by the sickness of his wife, child or children or himself, or shall make appear to said court any other sufficient reasonable excuse, then the said court shall remit the said fine and cause the said remittance to be recorded.

70 Petit Ju-  
rors for Su-  
preme Court,  
Com. Pleas &  
Qu'r Sessions  
without Ve-  
nine

71 Number

(86 87, 104.)

Sect. 7. The sheriff of the said counties respectively shall, at least ten days before every term of the Supreme Court, of the Court of Common Pleas and of the Court of General Quarter Sessions of the Peace and Gaol Delivery to be holden in each county respectively at the terms appointed by law for the same, without any writ of *venire facias juratores*, summon in writing thirty sober, discreet and judicious freeholders, having no matter of fact at issue depending for trial, and no cause to be tried at the same term, lawful men of fair characters, and inhabitants of his bailiwick, to serve as petit jurors at the then next term of the court to which they are summoned for the trial of all issues in civil and criminal causes at the said courts respectively, except in causes which shall be ordered by the Supreme Court or by the Court of

Common Pleas, to be tried by a struck jury; and also, except in causes in which the sheriff, for the time being, shall be a party or be interested in the same, or in which a challenge to the array may be allowed by the court. And the said sheriffs respectively shall, on the first day of every term of the said Courts respectively, within one hour after the said Courts respectively shall be opened, return to each of the said Courts a distinct and separate panel of such petit jurors, containing the christian and surnames, additions and places of abode of such jurors; and the same persons summoned to serve as petit jurors at the Court of Common Pleas, shall be summoned to serve as petit jurors at the Court of General Quarter Sessions of the Peace and Gaol Delivery, and returned as aforesaid to said courts, in separate and distinct panels as aforesaid.

72 Panel and Sheriff's duty

73 Same Jurors in the Court of Com. Pleas & Qu'r Sessions, &c. (102-101)

Sect. 8. The name of each and every person who shall be summoned and impaneled as aforesaid, shall be written on several and distinct pieces of paper, being all, as nearly as may be, of equal size, by the clerk or prothonotary of the court, or his agent, who shall, by direction and under the care of the Judges therein presiding, roll the said pieces severally, in the same manner as nearly as may be, and put them together in a box, to be provided, by the said clerk or prothonotary, for that purpose; and when any cause shall be brought on to be tried, some indifferent person, by the direction of the court, may and shall, in open court, draw out twelve of the said pieces of paper, one after another; and if any of the persons, whose names shall be so drawn, shall not appear, or shall be challenged and set aside, then such further number until twelve persons be drawn, who shall appear, and after all causes of challenge, be allowed as fair and indifferent, and the said twelve persons, so first drawn, appearing and allowed, their names being marked in the panel, and they being sworn or affirmed, shall be the jury to try the cause; and the names of the persons so drawn and sworn or affirmed, shall be kept apart by themselves in some other box, to be provided as aforesaid, and kept for that purpose, till such jury shall have given in their verdict and the same is recorded, or until the jury shall, by the leave of the court and the consent of the parties, be discharged; and then the same names shall be rolled up again and returned to the first mentioned box, there to be kept with the other names remaining at that time undrawn, and so *toties quoties*, as long as any cause remains there to be tried.

74 Jurors drawn (75-102)

Sect. 9. If any cause shall be brought on to be tried in any of the said courts respectively, before the jury in any other cause shall have brought in their verdict or be discharged, it shall and may be lawful for the court to order twelve of the residue of the said pieces of paper, not containing the names of any of the jurors in such other cause, to be drawn in manner aforesaid, for the trial of the cause which shall be brought on to be tried.

75 Jurors drawn before those in a prior cause discharged (102)

Sect. 10. Every person whose name shall be so drawn as aforesaid, and who shall not appear after being publicly called three times, shall forfeit and pay for every such default in not appearing upon call as aforesaid, any sum not exceeding ten dollars, which said fines shall be levied by the sheriff by an order of the court in which such default shall be made, which order shall be made im-

76 Penalties Jurors may incur for default

Fine

mediately after the next ensuing term of the Supreme Court, of the Court of Common Pleas or of the Court of General Quarter Sessions of the Peace and Gaol Delivery, as the case may be, and paid to the treasurer of the county by the sheriff, within forty days next after the said next ensuing term as aforesaid, for the use of the said county where such juror inhabits: *Provided*, that if any such defaulting person shall prove to the satisfaction of the court at the said next ensuing term after such default, by affidavit made by himself or by any credible person and duly filed among the records of said court, that his not appearing as aforesaid, was occasioned by the sickness of his wife, child or children or of himself, or shall make appear to said court any other sufficient reasonable excuse, then the said court shall remit the said fine and cause the said remittance to be recorded.

77 *Tales de  
circumstanti-  
bus*

Sect. 11. If a sufficient number of the persons so summoned to serve as petit jurors, shall not appear at any of the said courts respectively, or by reason of challenges or otherwise, there shall not be a sufficient number of them ready for the trial of any cause then brought on to be tried; in such case, upon an order of the court for filling up the jury, *tales de circumstantibus* shall be immediately summoned and returned by the sheriff, unless he be liable to some legal exception; and in such case to be summoned and returned by the coroner, unless he also be liable to some legal exception; and then to be returned by some proper and indifferent person to be appointed by the court for that purpose, and the persons thereupon summoned and returned, are hereby required to attend and serve as petit jurors at such court accordingly under the penalties aforesaid, to be levied as aforesaid.

78 Penalty  
for non-atten-  
dance

79 *Venire fa-  
cias juratores*  
— to Coroner

Sect. 12. If before issue is joined in any cause to be tried in any of the said courts there shall be any legal exception made to the sheriff and allowed by the court, or in case issue shall be joined in any such cause in term time, and there shall, at the same term at which issue is joined, be a challenge made to the array and allowed by the court, or in case issue shall be joined in any such cause in vacation, and there shall, at the term next after issue is so joined in vacation, be a challenge made to the array and allowed by the court; then and in every such case, a writ of *venire facias juratores*, shall be awarded by the court to the coroner, unless he be liable to any legal exception as aforesaid, and in case he be liable to any legal exception as aforesaid, then to some proper and indifferent person to be appointed by the court; and such coroner or person shall summon in writing at least ten days before the return of the said writ, twenty-four sober, discreet and judicious freeholders, lawful men of fair characters and inhabitants of the county, to serve as petit jurors in the trial of such cause; and the said writ shall be returned according to the command thereof, and there shall be annexed thereto a panel containing the christian, surnames, and places of abode of said persons summoned as petit jurors, as aforesaid; and every cause to be tried by such petit jurors, shall be proceeded in and conducted in the same manner and under the same regulations as herein before are prescribed and directed for the trial of other causes by petit jurors summoned by the sheriff; and the person so summoned and returned, as directed

in this section, shall attend and serve as petit jurors at such Court, in the trial of such causes, under the penalties aforesaid, to be levied as herein before is directed, and shall be entitled to the same fees as petit jurors summoned by the sheriff.

Sect. 13. Where a view shall be allowed in any cause, six of the jurors named in the panel, or more, shall have the view, and such of them as appear upon the jury to try the said cause, shall be first sworn or affirmed to try the same, before any drawing, as aforesaid, and so many only shall be drawn to be added to the viewers who appear, as shall, after default and allowed challenges, make up the number of twelve to be sworn or affirmed for the trial of such cause. 80 Case of a view

Sect. 14. The clerk or prothonotary shall, from time to time, enter or register, in a book to be kept for that purpose, the surnames, alphabetically, of every such person as shall be summoned and returned, as aforesaid, to serve as grand jurors or as petit jurors, at the said courts respectively, together with their christian names, additions and places of abode; and in the said book the said clerk or prothonotary shall mark or set down the attendance of each juror, and the default of each juror in not answering every call of his name, by order of the court; and the said clerk or prothonotary is hereby required to make out a list of the several jurors attending the court, together with the amount due to each juror; which said list shall be examined, approved and signed by the Judges presiding in said courts; and after such list shall be so examined, approved and signed, the clerk or prothonotary shall make out an order, payable to each juror, or order, for such sum as shall be so found due for his attendance or service as aforesaid, on the treasurer of the county, who is hereby required and authorized to pay the same; and the said lists, so made out, examined, approved, and signed by the judges aforesaid, shall be transmitted, by the clerk or prothonotary, to the Levy Court. 81 Register of Jurors and their attendance  
82 List to be signed by Judges  
83 Orders for payment  
84 Lists sent to Levy Ct.

Sect. 15. If any sheriff or sheriffs shall or do return, to any of the said courts, any person or persons, to serve as grand jurors or as petit juror or petit jurors, when such person or persons shall not have been summoned, according to the directions, true intent and meaning of this Act, such sheriff or sheriffs, shall, for every such offence, forfeit and pay to the State of Delaware, the sum of five dollars, to be recovered by indictment, in the Court of General Quarter Sessions of the Peace and Gaol Delivery in the county where such offence or offences shall be committed. And if any sheriff or sheriffs shall neglect or refuse to summon and return persons to the courts, respectively, to serve as grand jurors, or to serve as petit jurors, such sheriff or sheriffs shall, for every such offence, forfeit and pay to the State of Delaware, the sum of two hundred dollars, to be recovered by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery in the county where such offence shall be committed. 85 Penalty on sh'ffs returning Jurors not summoned  
86 Penalty for not summoning and returning Grand & Petit Jurors, to the respective courts

Sect. 16. Every sheriff and coroner, before he enters upon the execution of his office, shall, besides the qualification now required by the constitution of the State, take the following oath or affirmation according to law: "*I, A. B. do swear, or affirm that I will not summon any man for a juror, who, as I believe or*" 87 Oath of sh'ff & coroner respecting returns of Jurors



*suspect, will be influenced in determining any matter that shall come before him, as a juror, by hatred, malice or ill-will, fear, favour or affection, or any partiality whatever."*

88 Inquests  
to be sum-  
moned by  
sheriff

Sect. 18. The sheriffs of the respective counties of this State, shall and are hereby required and authorized, from time to time and at all times hereafter when and as often as occasion may require, to summon all and every other inquests or jurors, which sheriffs ought to summon, and witnesses requisite and necessary for the executing justice within their respective counties, who are hereby required to give due attendance accordingly; and for every neglect or default, every such sheriff shall forfeit and pay to the State of Delaware the sum of fifty dollars, to be recovered by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery, in the county where such neglect or default shall be made; and, moreover, shall pay to the party or parties wronged or injured by such neglect or default, all such damages as he, she or they shall sustain by reason thereof, to be recovered by action of debt, action on the case, or by bill, plaint, or information in any court of record in this State, wherein no essoin, wager, or protection of law, or any more than one imparlance shall be allowed.

89 Penalty  
for default  
Remedy to  
parties ag-  
grieved

90 Coroner

Sect. 19. The coroners of the respective counties, aforesaid, shall and are hereby authorized and required, from time to time, and at all times hereafter, when and as often as occasion may require, to regulate and behave themselves, in summoning juries, and in doing and performing other matters and services, when the sheriff cannot legally summon said juries, or do and perform said other matters and services, in the same manner and form as the sheriffs are by this Act directed, empowered and required, under the like penalties, and to be recovered in the same manner, for any neglect, default or omission, as are inflicted and laid upon sheriffs, for any neglect, default or omission, contrary to this Act; and generally to do and execute all other matters and things, which to their offices belong, by the common law, and by all statutes and parts of statutes and Acts of the General Assembly, in force in this State, under the penalties inflicted by the common law, or by such statutes, parts of statutes or Acts of the General Assembly.

91 Judgm'ts  
not reversible  
for want of  
veni. fa. ju.

Sect. 20. And whereas it hath often happened by the omission of clerks and prothonotaries, that causes in the Supreme Court and in the Court of Common Pleas, have been tried and judgments rendered therein, wherein no writ of *venire facias juratores* hath been issued, nor any jury summoned and panel returned, according to the directions of the Act, entitled "An Act for more certainly obtaining returns of impartial juries, and their better regulation;"—no judgment rendered in any cause in the Supreme Court, or in the Court of Common Pleas, in any county in this State, wherein a writ of *venire facias juratores* hath not been issued, nor any jury summoned and panel annexed, shall be reversed or reversible, by any writ of error, hereafter to be brought or sued out, for want of any such writ of *venire facias juratores*, or because a jury hath not been summoned and panel annexed, according to the directions of the said Act.

Sect. 26. All lands, tenements and hereditaments, within this

State, shall be liable to be sold by order of the Chancellor, upon such terms and in such manner as shall be directed by him, by the sheriff, or by any party to a suit in chancery, when any such sale shall be necessary to give effect to, and to carry into execution a decree of the Court of Chancery. And when any of the said lands, tenements and hereditaments shall be sold, by the authority of this Act, by order of the Chancellor, and there shall be a surplus of money arising from such sale, more than will be sufficient for the purpose for which such sale shall be made, such surplus shall be paid over or applied in such manner as the Chancellor shall order; and such sales shall be as available in law to the vendees as sales of land, seized and sold upon judgment and execution are, by virtue of any law of this State: *Provided*, that if any of the said decrees which do or shall warrant any such order, whereupon any lands, tenements or hereditaments shall be sold, shall be reversed by a decree of the High Court of Errors and Appeals, then and in every such case none of the said lands, tenements or hereditaments, so sold, nor any part thereof, shall be restored nor the sale thereof avoided; but restitution shall be made in such cases, of the money or price only for which such lands were or shall be sold: *And provided also*, that no such sale shall be valid until return thereof shall be made to the Court of Chancery, and such sale shall be approved and confirmed by the Chancellor.

92 Power of Chancellor to order sale of land, &c. for executing decree

93 effect of such sales

*Passed at Dover, February 2, 1811.*

## VII.

AN ACT for regulating the trial of causes by special juries, and for other purposes. 1810

Section 1. From and after the passing of this act, it shall and may be lawful for the Supreme Court or Court of Common Pleas, on the motion of any plaintiff or plaintiffs, defendant or defendants, in any action, cause or suit whatsoever depending or to be brought and carried on in said Supreme Court or Court of Common Pleas, and the said courts are hereby authorized and required, upon motion as aforesaid, to order and appoint a jury to be struck: and after such order, the party applying for such struck jury, shall give due notice to the opposite party, and to the clerk of said court, or his deputy, of the time and place of striking such jury, at which time and place the clerk of said court, or his deputy, shall attend with a list of the names of forty-eight freeholders of his county, qualified to serve as jurors, with their places of abode and additions, as he shall deem most indifferent between the parties, and best qualified to try such cause, and then the party applying for such struck jury, or his agent or attorney, shall first strike out one of the said names, and then the opposite party, or his agent or attorney, another, and so alternately until each shall have struck out twelve; but if such opposite party shall not attend such striking, nor any person in his behalf, then the said clerk or his deputy shall strike for the party not attending, and when each have struck out twelve, as aforesaid, the remaining

94 Special Juries

95 Manner of striking the Jury

- 96 List of Jurors to be delivered to the sheriff, & his duty. twenty-four shall be the jury to be returned to try the said cause, and the clerk of said court or his deputy shall thereupon make a fair copy of the names of the said remaining twenty-four persons with their places of abode and additions, and certify the same under his hand, to be the list of jurors struck as aforesaid, for the trial of such cause or issue; which list shall be delivered to the sheriff or other officer, who ought to summon such jury, together with the venire facias, and such sheriff, or other officer, shall thereupon annex the same list to such venire, and return the same as the panel of the jury to try such cause, and summon them according to the command of the same writ; and upon the trial of such cause the jury shall be drawn as in other cases, and the first twelve of them who shall be drawn and appear, and are not challenged, or shall be found duly qualified and indifferent, shall be sworn to try the said cause; but the party who shall apply for such struck jury shall pay the fees for striking thereof, and shall not have any allowance for the same upon the taxation of costs: *Provided always*, That if the clerk of such court shall be interested in the cause, or related to either of the parties, or if it shall appear probable to the court that he is not indifferent between them, then and in such case the court shall nominate two proper persons who are indifferent between the parties, to strike the jury, who shall do and perform every thing required to be done by such clerk, relating to the striking of such jury.
- 97 How Jury drawn
- 98 Party applying for struck Jury to pay the expense for striking thereof
- 99 When clerk interested, court shall appoint two persons to strike the Jury
- 100 How expense of Special Jury to be paid
- 101 Juror's fees
- 102 In all civil suits either party may challenge three Jurors without cause
- Sect. 2. The party who shall apply for a special jury, shall pay and discharge all the expenses occasioned by the trial of the cause by such special jury, and shall not have any further or other allowance for the same, upon taxation of costs, than such party would have been entitled unto in case the cause had been tried by a common jury, unless the court before whom the cause is tried shall immediately after the trial certify in open court upon the record, that the same was a cause proper to be tried by a special jury, and then and in such case the costs of such special jury shall be taxed and paid as other costs of the suit: *Provided always*, That where a special jury shall be applied for, the court, where such application shall be made, shall and are hereby required to order and direct the party applying for such jury to pay the costs, or such part thereof, as the said court, in their discretion, may deem proper, until the trial of the cause wherein such jury shall be summoned.
- Sect. 3. Every juror, summoned in pursuance of this act, shall be allowed for every day of his attendance and service in any of the courts of this State, provided he appear at every calling of his name by order of the court, the same fees as are allowed petit jurors for their attendance in any of the courts, to be taxed and paid as herein before directed.
- Sect. 4. Whosoever any civil cause shall be brought on to trial, and the jurors shall be drawn agreeably to the provisions of the Act, entitled, "An Act for the more certainly obtaining returns of impartial juries, and their better regulation;" it shall and may be lawful for either party, by himself or attorney, to challenge without cause any juror or jurors so drawn, not exceeding three in number, and the deficiency, so created, shall be supplied by drawing

as many additional names as may be necessary to make up a full jury to try such cause.

*Passed at Dover, January 30, 1810.*

### VIII.

AN ACT to repeal the Act, entitled "*An Act direct'ing the mode of selecting and returning Jurors, and for other purposes.*" 1821

Section 2. Any person who shall have served one year as a grand juror, shall not be again selected for the grand jury the next succeeding year; nor shall any person serving as a petit juror in either of the courts of this State, be summoned to serve more than one court in the same year: and the jurors so summoned according to this Act, shall be subject to the same fines and penalties for non-attendance as are prescribed by law. 103 Time of serving Grand Juror Petit Juror

Sect. 3. All practising physicians shall be exempt from serving on grand and general juries. 104 Practising Physicians excused

### IX.

AN ACT appointing the places of holding the courts. 1825

Section 1. 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 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. Places of holding 105 High Ct. of Err. & Ap. other Courts Newcastle Dover Georgetown 106 Power to appoint other places

Sect. 2. 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 107 Removal of records in case of invasion or danger of it.

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.

*Passed at Dover, January 23, 1829.*

X.

1826 A FURTHER SUPPLEMENT to the Act, entitled "*An Act to alter the times of holding the courts of law and equity in this State.*"

- Courts  
108 Terms
- 109 Chancery  
in Kent  
Newcastle  
Sussex  
(116)
- 110 Supreme  
Court  
in Sussex  
Kent  
Newcastle
- 111 Common  
Pis. & Qu'r  
Sessions  
in Sussex
- Kent
- Newcastle  
[Jan. 30, 1829]
- 112 High Ct.  
of Err. & App.
- 113 Atten-  
dance of each  
Judge record-  
ed
- Section 1. There shall be two terms in every year, in each of the counties of this State, of the Court of Chancery, the Supreme Court, the Court of Common Pleas and Court of General Quarter Sessions of the Peace and Gaol Delivery, which shall commence and be held as follows, that is to say; the Court of Chancery shall commence and be held, in Kent county on the second Monday of February and the fourth Monday in July, in Newcastle county on the fourth Monday of February and second Monday in July, and in Sussex county on the Monday next following the Monday on which the Supreme Court shall commence in Newcastle county in the month of March, and on the second Monday next after the fourth Monday of July: and the Supreme Court shall commence and be held in Sussex county on the second Monday of March and second Monday of October; in Kent county on the third Monday of March and third Monday of October; in Newcastle county on the fourth Monday of March and on the second Monday next after the term of the said court shall commence in October in Kent county: and the Court of Common Pleas and Court of General Quarter Sessions of the Peace and Gaol Delivery shall commence and be held in Sussex county in April on the third Monday after the commencement of the term of the Supreme Court in March in Newcastle county; and in November on the second Monday after the commencement of the term of the Supreme Court in October or November in Newcastle county; in Kent county on the second Monday after the commencement of the respective terms of the Court of Common Pleas in Sussex county; and in Newcastle county in May on 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; and in December on the second Monday after the commencement of the term of the said Court of Common Pleas in November or December (as the case may be) in Kent county.
- Sect. 2. The High Court of Errors and Appeals shall be held once in every year, in the town of Dover, in Kent county, on the second Monday in June, to receive, hear and judge of appeals and writs of error, and in all matters of law and equity, which shall come before the said court.
- Sect. 4. The Registers in Chancery, Prothonotaries of the Court of Common Pleas, the Clerks of the Peace, and Clerks of the Supreme Court, in the several counties of this State, shall, at each term of the court to which they respectively belong, enter on the docket of such court a record of the number of days which such

court remains in session, and the names of the Judges attending on each day of such session; and a like record shall be made by the Clerk of the High Court of Errors and Appeals on the docket of the said court, of the session of the said court and of the names of the Judges who shall, on each day of the holding of the said court, be in attendance therein; and the respective clerks shall make and transmit a true and certified copy of the same to the Secretary of State on every second Tuesday of January hereafter; and the said Secretary shall immediately lay a copy of the same before the General Assembly: and in all cases, that shall be removed from the Supreme Court, Court of Common Pleas or Court of General Quarter Sessions of the Peace or Court of Oyer and Terminer, in either of the counties of this State, to the High Court of Errors and Appeals by writ of error or otherwise, the Prothonotary or Clerk, by whom the record shall be transmitted to the said High Court of Errors and Appeals, shall state in such record the names of the Judges who were present at the trial of the cause so removed, or by whom the same was decided.

114 Copy of the record transmitted to Secretary of State & laid before Gen'l Assembly

115 Record sent to High Ct of Errors & Appeals names of Judges present at trial stated

*Passed at Dover, January 27, 1826.*

## XI.

AN ACT authorizing and requiring the Registers of the Court of Chancery to open and adjourn said court in certain cases. 1827

Section 1. 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 direction, then from day to day, for five successive days, and from thence to the term in course, unless the Chancellor shall attend.

116 Power of the Register in Chancery to adjourn court

*Passed at Dover, February 9, 1827.*

## CRIMES AND MISDEMEANORS.

### I.

AN ACT for more effectually punishing and discouraging offences committed in taking vessels out of the harbors of this State. 1792

For more effectually punishing and discouraging offences committed in taking vessels out of the harbors of this State.

Section 1. If any person or persons shall hereafter forcibly, fraudulently or secretly take, carry away or remove out of this State, or shall attempt so to take, carry away or remove out of this State, any ship or vessel from any harbor, port, river, creek, or sound within this State, on any pretence whatsoever, or shall

1 Forcibly, fraudulently or secretly removing vessels, from this State

aid or assist any person or persons in committing such offence, the person or persons so offending may be indicted and tried in the same manner as is usual in case of offences committed on land, in the Court of General Quarter Sessions of the county next adjoining to the water where such offence shall be committed, or, where such water runs between two counties, then in the Court of General Quarter Sessions for either of the said counties, and being thereof convicted in such court, shall forfeit and pay to the owner or owners of such ship or vessel and cargo the full value thereof, restore the same, if taken away, to such owner or owners, and shall pay a fine not exceeding five hundred pounds, lawful money of this State to the Treasurer thereof, towards the support of government.

Sect. 2. The value of such ship or vessel and cargo shall be assessed by the jury who pass upon the trial of such offender or offenders, and in case of confession, by a jury to be impanelled, by order of the court where such indictment shall be found, for that purpose, which such court is hereby authorized fully and effectually to cause to be done.

*Passed February 5, 1782.*

## II.

1799 AN ACT to prevent trespasses being committed on the lands on the north east side of Lewis-creek, called the Cape, in the county of Sussex.

2 Cutting or taking timber or wood on the Cape, on N. side Lewis creek

Whereas a grant was formerly made by the proprietaries of Pennsylvania to the inhabitants of the town of Lewes and county of Sussex, of the lands and marsh called the Cape, which are liable to be pillaged and much injured, the timber of which is a defence against the sea, and if once destroyed, the navigation of said creek may cease; for remedy whereof,

3 Penalty

(a) \$500-(6)

4 Privileges to Commissioners of bridge and keeper of light-house

Section 1. If any person or persons shall fall, cut, cart, or convey any green timber or wood, on or from said Cape, for any private use whatsoever, he or they shall be liable to be indicted and fined therefor in any sum not exceeding fifty dollars, (a) in the discretion of the Justices of the Quarter Sessions of the Peace for the said county: *Provided*, That it shall and may be lawful for the commissioners of the bridge across Lewes creek for the time being, to cut and make use of any timber on said Cape for the use of rebuilding and repairing said bridge and causeway, and for the keeper or keepers of the light-house at all times hereafter to have a privilege to cut and make use of as much timber on said Cape as will support him or them in firewood, fences, and repairs on said Cape for said light-house, and for no other purposes whatsoever.

5 Justice of the Peace to proceed against offenders

Sect. 2. If any Justice of the Peace for the said county shall know of any such trespass being committed, or shall have before him lodged a complaint of any such trespass being committed, it shall be his duty, and he is hereby authorized, empowered, and required to issue his warrant for the arresting and bringing before him every such offender, and shall require of him, her or them, to

enter into a recognizance with sufficient security for his, her, or their appearance before the next Court of Quarter Sessions of the Peace for the said county, and there to abide the determination of the said court; and in default thereof, the said Justice shall commit such offender to the county gaol, there to abide until legally discharged.

*Passed at Dover, January 24, 1799.*

**SUPPLEMENT** to the Act, entitled, "*An Act to prevent trespasses being committed on the North east side of Leves creek, called the Cape, in the county of Sussex.*" 1813

Section 1. If any person shall, for any offence against the said Act, hereafter committed, be indicted and convicted, he shall be liable to be fined therefor, in any sum not exceeding five hundred dollars, in the discretion of the Justices of the Quarter Sessions of the Peace for the said county. 6 Fine not exceeding \$500

*Passed at Dover, January 30, 1813.*

### III.

**AN ACT** more effectually to secure the payment of public claims and for other purposes. 1809

Section 1. If the State Treasurer or the Treasurer of either of the counties of this State or any collector of taxes in this State or the Treasurer of the Poor of either of the counties of this State or any person, whose duty it is or shall be to pay any claims or debts due or hereafter to become due from this State or either of the counties thereof, or the Trustees of the Poor of either of the said counties, shall buy or offer to buy, for less than the sum due or claimed, or shall pay or offer to pay, any claim, debt or demand against this State, or either of the counties of this State or the Trustees of the Poor of either of said counties, with a less sum than the sum actually due or claimed or demanded; then and in such case, every person so offending as aforesaid shall, for every such offence, forfeit and pay, for the use of the State, any sum not less than one hundred dollars, nor exceeding five hundred dollars, to be recovered by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery to be held for the county, in which such offence shall be committed. 7 Officers who are to pay public demands, buying  
Penalty

Sect. 2. If any person, as the agent of the State Treasurer, or the Treasurer of either of the counties of this State, or the Treasurer of the Poor of either of the counties of this State, or of any collector of taxes in this State or of any person, whose duty it is or shall be to pay any claims or debts due or hereafter to become due from this State or either of the counties thereof or the Trustees of the Poor of either of the said counties, shall buy or offer to buy any claim, debt or demand against this State or either of the counties of this State or the Trustees of the Poor of either of the counties of this State, for less than the sum due or claimed or shall, as agent aforesaid, pay or offer to pay any claim, debt or demand 8 Agents of such officers, buying



Penalty

against this State or either of the counties of this State, or the Trustees of the Poor of either of the counties of this State, with a less sum than the sum actually due, or claimed or demanded; then and in such case, every person, so offending as aforesaid shall, for every such offence, forfeit and pay, for the use of this State, any sum not less than one hundred dollars nor exceeding five hundred dollars, to be recovered by indictment in the Court of General Quarter Sessions of the Peace and Goal Delivery, to be held for the county in which such offence shall be committed.

*Passed at Dover, January 21, 1809.*

## IV.

1818 AN ACT to prevent the disturbance of camp meetings held for the purpose of religious worship.

9 Camp Meetings—selling, &c. or having place to sell liquor or food within two miles of—during or on day preceding—prohibited (12)  
10 Taverns and Stores excepted

Section 1. No person or persons whosoever shall make, erect, place or have any booth, stall, tent, carriage, or place for the purpose of selling, trafficking or disposing of any spirituous liquor or liquors, wine, porter, beer, cider, bread, food or other provisions or articles whatsoever within two miles of the place, where any camp-meeting shall hereafter be held in this State for the purpose of religious worship, at any time during the holding of said meeting or on the day prior to the commencement thereof, excepting only taverns, public houses of entertainment and stores regularly established for the sale of goods, wares or merchandizes, or shall sell or traffick or dispose of, or have for sale or traffick or to be disposed of, any spirituous liquor or liquors, wine, porter, beer, cider, bread, food, provisions or articles whatsoever at any booth, stall, tent, cart, carriage or place within two miles of any such camp-meeting hereafter to be held in this State for the purpose of religious worship, excepting only taverns, public houses of entertainment and stores regularly established for the sale of goods, wares or merchandizes, during the holding of such meeting or the day prior to the commencement thereof; and if any person or persons shall make, erect, place or have any booth, stall, tent, cart, carriage or place for the purpose of selling trafficking or disposing of any spirituous liquor or liquors, wine, porter, beer, cider, bread, or other provisions or articles whatsoever within two miles of the place, where any camp-meeting shall hereafter be held in this State for the purpose of religious worship, at any time during the holding of said meeting or on the day prior to the commencement thereof, excepting only as aforesaid is excepted, or shall sell, traffick or dispose of, or have for sale, traffick or to be disposed of, any spirituous liquor or liquors, wine, porter, beer, cider, bread, food, provisions or articles whatsoever at any booth, stall, tent, cart, carriage or place within two miles of any such camp-meeting hereafter to be held in this State, except as aforesaid is excepted, during the holding of such meeting or the day prior to the commencement thereof, such person or persons so offending shall forfeit and pay a sum not less than one dollar nor exceeding twenty dollars lawful money of the United States of America, to be recovered by in-

11 penalty

dictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery. And it shall be the duty of any Justice of the Peace in this State, upon complaint made to him and duly supported by oath or affirmation, of an offence committed against this Act, to require the person or persons offending to find surety or sureties for his her or their appearance at the next Court of General Quarter Sessions of the Peace and Gaol Delivery in the county, in which the offence shall have been committed, and in the mean time to be of good behaviour and keep the peace.

Sect. 2. It shall be lawful for the managers of any camp-meeting, to be held as aforesaid, by writing under their hands or the hands of any three of them, to license and permit any person or persons to sell food and provisions for the use of such meeting and have any tent or booth for that purpose. 12 License

*Passed at Dover, January 27, 1818.*

## V.

### AN ACT providing for the punishment of certain crimes and misdemeanors. 1826

Section 1. The crimes and misdemeanors hereinafter mentioned, shall be punished as hereinafter prescribed; that is to say:

If any person or persons shall commit treason against this State; every person so offending, upon conviction thereof, shall suffer death. 13 Treason

If any person or persons shall commit the crime of murder; every person so offending shall be deemed guilty of felony, and, upon conviction thereof, shall suffer death: and also if any person or persons, at any place within this State, shall, wilfully and maliciously, shoot, strike, stab, wound or poison any person, who shall, within one year afterward, die of such shooting, striking, stabbing, wounding or poisoning at any place without this State; every person so offending (notwithstanding the death shall happen without the State) shall be deemed guilty of murder and felony, and, upon conviction thereof, shall suffer death. 14 Murder (109)  
15 Stroke in this State and death in another (101)

If the killing of a person shall be attended by circumstances of alleviation, so that it shall not amount to murder, but shall be the crime by law denominated manslaughter; there shall be two degrees of the crime, to wit, manslaughter of the first degree, and manslaughter of the second degree: 16 Man-slaughter (108)

Voluntary manslaughter, excepting manslaughter voluntarily committed by a husband on a person found in the act of adultery with his wife, manslaughter involuntarily committed, in the prosecution of an unlawful act or purpose but not of such a character as to constitute the offence murder, and manslaughter involuntarily committed in the performance of a lawful act, but under circumstances or in a manner or by means, which cause an apparent danger of inflicting death, without using due precaution to avoid such danger, shall be manslaughter of the first degree; and manslaughter of every other description shall be manslaughter of the second degree. 17 of the first degree (151)  
18 of the second degree (153)

19 Stroke in  
this State &  
death in an-  
other

If any person be stricken or wounded in this State and die of the said stroke or wounding in another State, and the circumstances be such as to constitute the crime manslaughter of the first or second degree; the offender or offenders shall be liable to be indicted, prosecuted and punished in the same manner and as effectually as if such death had happened in the county, in which the mortal stroke or wound was given.

20 Assault  
with intent to  
murder

If any person or persons shall, with violence, make an assault upon another, with intent to commit murder; 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 five hundred dollars nor more than six thousand dollars, shall be set on the pillory for the space of one hour, shall suffer imprisonment for a term not exceeding two years, and shall, at the expiration of such term of imprisonment, be disposed of as a servant to the highest and best bidder or bidders, for a period not less than one year nor exceeding seven years.

[99]

21 Poisoning

If any person or persons shall wilfully and maliciously administer to any person or persons, or wilfully and maliciously, cause or occasion any person or persons to take any deadly poison or noxious and destructive substance; 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 five hundred dollars nor more than ten thousand dollars, shall be set on the pillory for the space of one hour, shall be publicly whipped with sixty lashes on the bare back well laid on, shall suffer imprisonment for a term not exceeding four years, and upon the expiration of such term of imprisonment, shall be disposed of as a servant for the period of fourteen years.

[99]

22 Mayhem,  
by lying in  
wait

If any person or persons shall, maliciously and by lying in wait, cut out or disable the tongue, or put out an eye, or slit or cut or bite off the nose, lip or ear of any person, or maim any person; 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 nor more than two thousand dollars, shall be whipped with sixty lashes on the bare back well laid on, shall suffer imprisonment for a term not exceeding two years, and, upon the expiration of such term of imprisonment, shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than four years nor exceeding seven years:

23 without  
lying in wait

If any person or persons shall maliciously without lying in wait, maim another person; 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 two hundred dollars nor more than two thousand dollars, and shall suffer imprisonment for a term not less than three months nor more than one year.

24 Rape

If any person or persons shall commit the crime of rape; every person, so offending shall be deemed guilty of felony, and, upon conviction thereof shall suffer death.

25 Assault  
with intent to  
ravish

If any person or persons shall, with violence, make an assault upon any female, with intent to commit a rape, or if any person or

26 abusing a

persons shall carnally know and abuse a female child under the age

of ten years; 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 nor more than five thousand dollars, shall be set on the pillory for the space of one hour, shall be publicly whipped with sixty lashes on the bare back well laid on, shall suffer imprisonment for a term not exceeding two years, and, upon the expiration of such term of imprisonment, shall be disposed of as a servant to the highest bidder or bidders, for the period of fourteen years.

female under  
ten years of  
age

If any person or persons shall in the night time break and enter into the dwelling house of another person, with intent to commit murder, rape, robbery, larceny or any other felony, whether such intent be executed or not; every person so offending shall be deemed guilty of burglary and felony, and, upon conviction thereof, shall suffer death.

27 Burglary

If any person or persons shall in the night time break and enter into any house or office, wherein public records are kept, with intent to purloin, alter, obliterate, deface, destroy or injure any such record, whether such intent be executed or not; 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 five hundred dollars nor more than five thousand dollars, shall be whipped publicly with thirty-nine lashes on the bare back well laid on, shall be set on the pillory for the space of one hour, shall suffer imprisonment for a term not exceeding one year, and upon the expiration of such term of imprisonment shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than four years nor exceeding seven years.

28 Breaking  
into an office  
in night with  
intent to pur-  
loin, alter, &c.  
public records

If any person or persons shall in the day time break and enter into the dwelling-house of another, with intent to commit murder, rape, larceny or any other felony; or if any person or persons shall enter into the dwelling-house of another by day or by night without breaking the same, with an intent to commit murder, rape, larceny or any other felony; or if any person or persons being in the dwelling-house of another shall commit any felony and shall in the night time break the said house to get out of the same; or if any person or persons shall in the night time break and enter into any warehouse, store, shop or out house of another, wherein any goods, wares or merchandise, money or other thing in possession or action being the subject of larceny are kept or deposited, with intent to commit larceny; whether in either case the intent be executed or not; every person so offending shall be deemed guilty of felony, and, upon conviction thereof, shall be set on the pillory for the space of one hour, shall be whipped publicly with thirty-nine lashes on the bare back well laid on, shall suffer imprisonment for a term not exceeding one year, and upon the expiration of such term of imprisonment shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than two years nor exceeding seven years, and moreover, if any goods, chattels, wares or merchandise, money or other thing being the subject of larceny shall have been taken, shall forfeit and pay as restitution money to the owner or owners thereof fourfold the value thereof, unless such goods, chat-

29 House-  
breaking by  
day, intent  
felonious;  
committing  
felony and  
breaking  
house, in  
night, to get  
out, breaking  
ware-house,  
&c.

tels, wares or merchandise, money or other thing or any part thereof shall have been returned, and in that case twofold the value of the goods, chattels, wares or merchandise, money or thing returned.

30 Arson

If any person or persons shall wilfully and maliciously burn or set on fire any dwellinghouse of another, or any store, barn, stable or other building adjoining to or parcel of a dwelling house of another, or the Court House in either of the counties of this State, or any house or office, wherein public records are kept; every person so offending shall be deemed guilty of arson and felony, and, upon conviction thereof, shall suffer death.

31 Burning  
other build-  
ings

If any person or persons shall wilfully and maliciously burn or set on fire any magazine, any church, chapel or meeting house, any academy or school house, any ship or other vessel of another, or any building hereinafter described being the property of another; to wit; any mill, any building part of a manufacturing establishment or used in carrying on any manufacture or trade, any granary, warehouse, store, shop, barn, stable or outhouse, other than, and excluding from the foregoing description, the subjects of the preceding provision against arson, that is to say, "any dwelling-house of another," and "any store, barn, stable" and "other building adjoining to or parcel of a dwelling-house of another," and "the Court House in either of the counties of this State," and "any house," and "office wherein public records are kept;" 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 five hundred dollars nor more than six thousand dollars, or, in case of the destruction of private property, shall restore and pay to the owner or owners thereof fourfold the value thereof, shall be set on the pillory for the space of one hour, shall be publicly whipped with any number of lashes not exceeding sixty, on the bare back well laid on. shall suffer imprisonment for a term not exceeding two years, and upon the expiration of such term of imprisonment shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than four years nor exceeding fourteen years.

32 Burning  
by the owner  
or tenant  
with intent to  
defraud un-  
derwriters

If any person or persons being owner or owners, tenant or tenants of any dwelling-house, warehouse, store, shop, mill, or other building, shall wilfully burn the same, with intent thereby to defraud or prejudice any person, persons or corporation, that shall have underwritten any policy or policies of insurance thereon, or on any goods wares or merchandise therein; every person so offending shall be deemed guilty of felony, and, upon conviction thereof, shall forfeit and pay to the State a fine of fourfold the sum insured upon such dwelling-house, warehouse, store, shop, mill or other building and upon such goods, wares and merchandise, and shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than three nor exceeding seven years.

33 Burning  
grain & other  
articles

If any person or persons shall wilfully and maliciously burn or set on fire any wheat or other grain, hay or straw, any boards shingles or other lumber, or any coals, of another; 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 exceeding three thousand dollars, shall be whipped publicly with any number of lashes not exceeding thirty-nine, and shall be disposed of as a servant to the highest and best bidder or bidders for a period not exceeding four years.

If any person or persons shall wilfully and maliciously burn or set on fire any wheat, grain, hay, straw, boards, shingles, lumber, coals, building, ship or vessel, and if the said fire so set shall extend or spread, the person or persons setting such fire shall be deemed and held to be guilty of burning or setting on fire every the dwelling-house, ship, vessel or building or matter, to which such fire shall extend and communicate.

34 Commencing fire that spreads

If any person or persons shall wilfully and maliciously attempt to set on fire any dwelling-house or other building, any ship or other vessel, any wheat, grain, hay, straw, boards, shingles, lumber or coals, of another; 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 exceeding five thousand dollars, and shall be publicly whipped with any number of lashes not exceeding thirty-nine, and shall be sold as a servant to the highest and best bidder or bidders for a period not exceeding four years.

35 Attempting to set fire to dwelling house, &c.

If any person or persons shall kidnap and carry away any free negro or free mulatto from this State into any other State or country, or shall aid or assist any person or persons in kidnapping and carrying away any free negro or free mulatto from this State into any other State or country, or if any person or persons shall take and imprison any free negro or free mulatto, with intent to kidnap and carry away such free negro or free mulatto from this State into any other State or country, or shall aid or assist any person or persons in taking and imprisoning any free negro or free mulatto, with intent to kidnap and carry away such free negro or free mulatto, from this State into any other State or country, or if any person or persons shall fraudulently seduce and decoy any free negro or free mulatto from this State into any other State or country, with intent that such free negro or free mulatto shall be sold or disposed of or held as a slave or servant, or shall aid or assist any person or persons in fraudulently seducing and decoying any free negro or free mulatto from this State into any other State or country, with intent that such free negro or free mulatto shall be sold or disposed of or held as a slave or servant; 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 one thousand dollars nor more than two thousand dollars, shall be set on the pillory for the space of one hour, shall be publicly whipped with sixty lashes on the bare back well laid on, and shall be imprisoned, in solitary confinement, for a term of not less than three nor more than seven years and at the expiration of said imprisonment shall be disposed of as a servant to the highest and best bidder or bidders for the period of seven years; and every person or persons so offending a second time, upon conviction of such second offence, shall suffer death.

36 Kidnaping

37 Second offence death (113)

If any person or persons shall feloniously take from the person

- 38 Robbery of another, by violence or by putting him or her in fear, any money, goods, chattels or effects, of any value, or any bank note, promissory note, bill of exchange, check, order or obligation for the payment of money or delivery of goods, or any warrant of attorney, deed, release, receipt, acquittance, or written instrument giving, granting, transferring, securing, conferring, releasing, discharging, or acquitting any estate, right, interest, power, authority, debt, claim or demand of any value; every person so offending shall be deemed guilty of robbery and felony;—and if the offence shall be committed on or near to the highway, or in a dwelling-house, the offender or offenders, upon conviction thereof, shall forfeit and pay to the State a fine not less than one thousand dollars nor more than five thousand dollars, shall be set on the pillory for the space of one hour, shall be publicly whipped with sixty lashes upon the bare back well laid on, shall suffer imprisonment for a term not exceeding four years, and upon the expiration of such term of imprisonment shall be disposed of as a servant to the highest and best bidder or bidders for the period of fifteen years; and if such offence shall be committed in any other place, than on or near the highway or in a dwelling-house, the offender or offenders, on conviction thereof, shall forfeit and pay to the State a fine not less than five hundred dollars nor more than two thousand dollars, shall be set on the pillory for the space of one hour, shall be publicly whipped with thirty-nine lashes on the bare back well laid on, shall suffer imprisonment for a term not exceeding two years, and shall be disposed of as a servant to the highest and best bidder or bidders for the period of ten years.
- 39 on or near the highway or in a dwelling house (109)
- 40 in any other place
- 41 Assault with intent to commit robbery
- 42 Larceny of slave, of horse,—by picking lock, &c. (101)
- If any person or persons shall with violence make an assault on another, with intent to commit robbery; 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 two hundred dollars nor more than one thousand dollars, shall be publicly whipped with thirty-nine lashes on the bare back well laid on, shall suffer imprisonment for a term not exceeding two years, and shall be disposed of as a servant to the highest and best bidder or bidders for the period of four years.
- If any person or persons shall feloniously steal take and carry away any negro or mulatto slave; or if any person or persons shall feloniously steal take and carry away any horse, mare, gelding, colt, ass or mule; or if any person or persons shall pick or break any lock, and feloniously steal, take and carry away any goods, chattels or effects, bank note or bill, promissory note, bill of exchange, check, order or bond for the payment of money, or any obligation or written security for the payment of money or the delivery of goods or merchandise, or any deed, warrant of attorney, certificate of stock, release, receipt or other writing giving, granting, transferring, securing, conferring, releasing or discharging any estate, right, interest, power, authority, debt, claim or demand, of any value, which were under or secured by said lock; every person so offending shall be deemed guilty of larceny and felony, and, upon conviction thereof, shall forfeit and pay, as restitution money, to the owner or owners of such slave, horse, mare, gelding, colt, ass or mule, or of such goods, writing

or chose in action, fourfold the value thereof, unless the same shall have been restored, and in that case, twofold the value thereof, shall be set on the pillory for the space of one hour, shall be publicly whipped with thirty-nine lashes upon the bare back well laid on, and shall be disposed of as a servant to the highest and best bidder or bidders for the period of seven years. (99)

If any person or persons having stolen in any other State any horse, gelding, mare, colt, ass or mule, shall bring the same into this State and sell, exchange or dispose of, or offer to sell, exchange or dispose of the same; every person, so offending, upon conviction thereof, shall forfeit and pay, in case of a sale, exchange or disposal effected, as restitution money, fourfold the sum of money or other value received upon such sale, exchange or disposal, to the person or persons, from whom the same shall have been received, shall be publicly whipped with thirty-nine lashes upon the bare back well laid on, and shall suffer imprisonment for a term not exceeding two years; but the foregoing provision or any proceeding under it shall not prevent nor delay the Governor from causing any person offending against said provision, to be delivered up, upon the demand of the executive authority of any State or territory, according to the constitution and laws of the United States; and in case of a conviction of an offence against said provision, the court shall transmit information of the circumstances to the Governor, that the same may be communicated to the executive authority of the State, in which the theft shall have been committed.

If any person or persons shall buy, receive or conceal any slave, horse, gelding, mare, colt, ass or mule, which shall have been stolen, knowing the same to have been stolen; every person so offending shall be deemed guilty of felony, and upon conviction thereof, shall forfeit and pay, as restitution money, to the owner or owners of such slave, horse, gelding, mare, colt, ass or mule so bought, received or concealed, fourfold the value thereof, unless the same shall have been restored, and in that case twofold the value thereof, shall be publicly whipped with thirty-nine lashes on the bare back well laid on, and shall be disposed of as a servant to the highest and best bidder or bidders for the period of seven years.

If any person or persons, other than a free negro or free mulatto, shall feloniously steal, take and carry away any goods, chattels or effects, bank note or bill, promissory note, bill of exchange, check, order or bond for the payment of money, or any obligation or written security for the payment of money or delivery of goods or merchandise, or any warrant of attorney or other instrument authorizing the receiving of any money, or any certificate of bank stock or of funded debt of the United States, or any release or receipt discharging or acquitting any debt or demand; every person, other than a free negro or free mulatto, so offending shall be deemed guilty of larceny and felony, and upon conviction thereof, shall forfeit and pay, as restitution money, to the owner or owners of such goods, chattels or effects, bank note or bill, promissory note, bill of exchange, check, order, bond, obligation, written security, warrant of attorney, certificate, release, receipt or other instrument, fourfold the value thereof, unless the same shall have

43 Disposing or offering a horse stolen in another State (101)

44 this not to delay giving up offender on demand

45 on conviction, duty of Court & Governor

46 Receiving stolen slave or horse, knowing'y (85)

47 Larceny  
48 Subjects things in action, as well as goods (112-101)



(90-92) 'been restored, and in that case twofold the value thereof, shall be publicly whipped with twenty-one lashes upon the bare back well laid on, and, for the space of six months after discharge from prison, shall wear a Roman T not less than four inches long and one inch wide, of a scarlet color, on the outside of the outermost garment, upon the back, between the shoulders, so as at all times to be fully exposed to view, for a badge of his or her crime; and every person, other than a free negro or free mulatto, so offending a second or other subsequent time, upon conviction of such second or subsequent offence, shall forfeit and pay, as restitution money, to the owner or owners, fourfold the value as aforesaid, unless the property, thing or chose in action stolen shall have been restored, and in that case twofold the value thereof, shall be publicly whipped with thirty-nine lashes on the bare back well laid on, shall be set in the pillory for the space of one hour, and shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than one year, nor exceeding seven years.

49 Second or subsequent offence (113)

(99)

50 Receiving stolen goods, &c. knowingly (85)

If any person or persons, other than a free negro or free mulatto, shall buy, receive or conceal any goods, chattels or effects, bank note or bill, promissory note, bill of exchange, check or order for the payment of money, or other matter or writing being the subject of larceny, which shall have been stolen, or taken by robbery, knowing the same to have been stolen, or taken by robbery; every person, other than a free negro or free mulatto, so offending shall be deemed guilty of felony, and upon conviction thereof, shall forfeit and pay to the owner or owners of any such goods, chattels, effects, bank note or bill, promissory note, bill of exchange, check or order or other matter or chose in action, so bought, received or concealed, fourfold the value thereof, unless the same shall have been restored, and in that case twofold the value thereof, shall be publicly whipped with twenty-one lashes on the bare back well laid on, and, for the space of six months after discharge from prison, shall wear a Roman R, not less than four inches long and one inch wide, of a scarlet color, on the outside of the outermost garment, upon the back, between the shoulders, so as at all times to be fully exposed to view, for a badge of his or her crime; and every person, other than a free negro or free mulatto, so offending a second or other subsequent time, upon conviction of such second or other subsequent offence, shall forfeit and pay to the owner or owners like restitution money as aforesaid, shall be publicly whipped with thirty-nine lashes upon the bare back well laid on, shall stand in the pillory for the space of one hour, and shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than one year, nor more than seven years.

[90-92]

51 Second or subsequent offence [113]

52 Larceny or receiving stolen goods by free negroes or mulattoes [112-85]

If any free negro or negroes, free mulatto or mulattoes shall feloniously steal, take and carry away any goods, chattels or effects, any bank note or bill, promissory note, bill of exchange, check, order or bond for the payment of money, or any order, obligation or writing for the delivery of goods or merchandise, any warrant of attorney authorizing the receiving of money, or any release, acquittance or receipt discharging a debt or demand; or if any free negro or negroes, free mulatto or mulattoes shall buy, receive or

conceal any goods, chattels or effects, bank note or bill, promissory note, bill of exchange, check, order or bond for the payment of money, or any order, obligation or writing for the delivery of goods or merchandise, any warrant of attorney authorizing the receiving of money, or any release, acquittance or receipt discharging a debt or demand, which shall have been stolen, or taken by robbery, knowing the same to have been stolen or taken by robbery; every free negro or free mulatto so offending shall be deemed guilty of felony, and, upon conviction thereof, shall forfeit and pay, as restitution money, to the owner or owners of such goods, chattels, effects, bank note or bill, promissory note or other matters or writings so stolen, bought, received or concealed, fourfold the value thereof, unless the same shall have been restored, and in that case twofold the value thereof, shall be publicly whipped with twenty-one lashes upon the bare back well laid on, and shall be disposed of as a servant to any person or persons residing within this State, for the highest sum that can be obtained, for such term, as shall be necessary in order to raise the restitution money and all costs or any balance thereof, that may remain after such payment as the offender may be able to make; provided that such term shall not exceed seven years; and every free negro or free mulatto, so offending a second or other subsequent time, upon conviction of such second or other subsequent offence, shall forfeit and pay to the owner or owners like restitution money as aforesaid, and shall be disposed of, as a servant to the highest and best bidder or bidders, for the period of seven years. And for the first offence the court may, in their discretion and if they shall consider that the circumstances render it proper, adjudge and direct that the offender shall be disposed of as a servant, to the highest and best bidder or bidders, instead of "to any person or persons residing within this State."

[123]

53 Second or subsequent offence

54 discretion on first offence

[99]

If any person shall conscientiously refuse to take an oath in any case or on any occasion, in or upon which it would otherwise be necessary or proper that an oath should be administered to such person, an affirmation shall be substituted for an oath and administered to such person and shall be as sufficient and shall have the same effect to all intents and purposes, as an oath:

55 Affirmation

The taking of a false affirmation shall be perjury in every case and on every occasion, in or upon which the taking of a false oath would be perjury; and the violation or breach of an affirmation shall be the same crime as the violation or breach of an oath:

56 Violation of affirmation and of oath, same crime

If any person shall commit the crime of perjury, or shall suborn or procure any other person to commit the crime of perjury; 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 five hundred dollars, nor more than two thousand dollars, shall be set on the pillory for the space of one hour, and shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than four years nor exceeding seven years.

57 Perjury &amp; subornation

[111]

If any person or persons, with intent to defraud, shall falsely alter a bill or note of any incorporated bank, whether such bank be in or out of this State, or shall falsely make, forge or counterfeit any bill or note in imitation of, or purporting to be a bill or

58 Forgery of Bank notes &amp; other instruments affecting Bank

50 Passing or attempting to pass such forged note or instrument

[90—92]

60 Making any plate, &c. for forging any Bank bill

61 having in possession such plate &c. or unfinished bills, &c.

[90—92]

62 Bank notes within these provisions

63 Forgery of other papers [110]

note of any incorporated bank, whether such bank be in or out of this State, or any instrument purporting to be a certificate of deposit, in any such bank, or shall forge or counterfeit the hand of the president or of the cashier of any such bank to any instrument purporting to contain or express a contract of or for such bank for the payment of money or an acknowledgment of any deposit in such bank, or shall publish or utter as true, pass or attempt to pass, any such altered, forged or counterfeited bill or note or instrument, knowing the same to be altered, forged or counterfeited; 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 five hundred dollars nor more than two thousand dollars, shall be set on the pillory for the space of one hour, shall suffer imprisonment in solitary confinement for the term of three months, and shall wear the letter F at least six inches long and two inches wide, of a scarlet color, upon the outside of the outermost garment, on the back between the shoulders, so as at all times to be fully exposed to view, as a badge of his or her crime, for a period not less than two years nor exceeding five years after his or her discharge from prison.

If any person or persons shall make or engrave any plate, implements or materials for the purpose of falsely altering, forging or counterfeiting any note or bill in imitation of or purporting to be a bill or note of any incorporated bank, whether such bank be in or out of this State, or any part of such bill or note, or shall have in possession any such plate, implements or materials, knowing the same and with intent that they shall be used for the purpose aforesaid, or shall have in possession any blank or unfinished note or bill made in the form or similitude of a bill or note of any such incorporated bank, with intention fraudulently to fill up and complete the same, or to permit or to cause the same to be fraudulently filled up and completed, 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 five hundred dollars nor more than four thousand dollars, shall be set on the pillory for the space of one hour, shall be publicly whipped with thirty-nine lashes on the bare back well laid on, shall suffer imprisonment for a term not exceeding two years, and shall wear the letter F, of the size, color and in the manner prescribed in the last preceding paragraph for a period not less than five years after his or her discharge from prison, for a badge of his or her crime.

The description of a bill or note of any incorporated bank used in the two preceding paragraphs shall extend to and comprehend any bill or note of the president, directors and company, or the president and directors of such bank, or any bill or note issued by order or on behalf of the president, directors and company, or the president and directors, of such bank, or any bill or note containing or expressing a promise or contract of the corporation, or on their behalf, for the payment of money.

If any person or persons, with intent to defraud, shall falsely make, forge or counterfeit any instrument or writing purporting to be a promissory note, bill of exchange, check, order, obligation or single bill, for the payment of money or delivery of goods or

merchandise, or an acceptance of a bill of exchange or order, or an indorsement or assignment of a promissory note, bill of exchange, check order, obligation or single bill or other chose in action, or a deed for conveying, giving, transferring, releasing or acquitting any property, real, personal or mixed, or any estate, interest, right or title in, to or concerning the same, a last will and testament, a will or codicil, a warrant of attorney, a release, acquittance or receipt, an indorsement of credit upon a promissory note, bill of exchange, order, obligation or single bill, or an instrument creating or discharging a contract for the payment of money or delivery of goods or merchandise, or for the sale, conveyance, assignment or release of any property, real, personal or mixed, or chose in action, or any interest in or concerning the same, or creating or discharging any covenant or stipulation, or shall forge or counterfeit the hand and seal, or the hand or seal, of any person or persons, or shall forge or counterfeit the seal of any corporation, or the hand of any officer of a corporation to any instrument or writing purporting to be an instrument of or for such corporation, or shall falsely alter any promissory note, bill of exchange, check, order or other instrument or writing herein before specified or mentioned, or shall publish or utter as true, or pass or attempt to pass any such forged or counterfeited instrument or writing as aforesaid, or any such falsely altered promissory note, bill of exchange, check, order or other instrument or writing herein before specified or mentioned, knowing the same to be forged, counterfeited or altered; 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 five hundred dollars nor more than two thousand dollars, shall be set on the pillory for the space of one hour, shall suffer imprisonment, in solitary confinement, for the term of three months, and shall wear the letter F, at least six inches long and two inches wide, of a scarlet color, upon the outside of the outermost garment, on the back between the shoulders, so as at all times to be fully exposed to view, for a badge of his or her crime, for a period not less than two years nor exceeding five years from his or her discharge from prison.

64 knowingly  
passing

(90-92)

If any person or persons shall counterfeit the great seal of this State, or the seal of the Secretary's office, or the seal of any court or public officer by law authorized to have and use a seal, or shall have in possession any such counterfeited seal, knowing the same to be counterfeited, and shall wilfully conceal it, or shall unlawfully and corruptly or with evil intent, affix any of the said true seals to any writing or instrument; every person so offending shall be deemed guilty of felony, and, upon conviction thereof, shall forfeit and pay to the State a fine of one thousand dollars, and shall suffer imprisonment not less than six months nor more than two years.

65 Counter-  
feiting public  
seals

66 corruptly  
affixing true  
seal

If any person or persons shall forge or counterfeit, falsely alter or deface, embezzle or destroy any record of any court of this State, or paper in the nature of a record in any such court, or any record in the office for recording of deeds or in the Register's office, in either of the counties of this State, or any bond, account or other paper filed in either of said offices, with intent to defraud any person or persons or corporation, or to embarrass, delay or obstruct

67 Forging,  
embezzling  
or destroying  
public records

- (90-92) the administration of justice ; 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 five hundred dollars nor more than four thousand dollars, shall suffer imprisonment in solitary confinement for the term of three months, and shall wear the letter F, of the same dimensions and color and in the place and manner prescribed in those particulars in the last preceding paragraph, as a badge of his or her crime, for a period not less than five years from the time of his or her discharge from prison.
- 68 Duelling If any person shall by letter, note or verbal message challenge, call upon or invite any other person to fight a duel, or shall accept any such challenge, call or invitation, or shall knowingly and wittingly bear or deliver such challenge, call or invitation ; or if any person shall be engaged in or shall fight a duel, or shall be the aid or second to either party in a duel, whether the same be fought or not, or shall encourage or abet the fighting of a duel ; every person so offending, upon conviction thereof, shall forfeit and pay to the State a fine of one thousand dollars, shall suffer imprisonment for the term of three months, and shall be forever disqualified and incapable of holding a seat in the General Assembly or any office of honor, trust or profit in this State.
- 69 Riot and riot If any three or more persons shall meet together with clubs, staves or other hurtful weapons to the terror of any of the people of this State, and shall commit or attempt to commit violence or injury to any person or to the property of any person ; or if three or more persons shall commit a riot : every person so offending, upon conviction thereof, shall forfeit and pay to the State a fine not less than twenty dollars nor more than two hundred dollars, and may be also sentenced to suffer imprisonment for a term not exceeding six months, if the court shall deem the circumstances to require such additional punishment.
- 70 Lotteries If any person or persons, without special liberty from the General Assembly of this State, shall set up and draw any lottery, to raise and collect money, or for the sale of any property, every person so offending, for every such offence, upon conviction thereof, shall forfeit and pay to the State a fine not less than five hundred dollars, and not exceeding ten thousand dollars, and shall suffer imprisonment for a term not exceeding three years : provided however, that nothing in the foregoing provision contained shall extend to the setting up or drawing of any lottery, in the scheme of which lotteries in other States may be consolidated with a lottery or lotteries authorized by the General Assembly of this State.
- 71 Barratry, maintenance & champerty If any person or persons shall be guilty of common barratry, maintenance or champerty, every such person upon conviction of such offence, shall forfeit and pay to the State a fine not less than fifty dollars nor more than four hundred dollars.
- 72 Bigamy (71) If any person having contracted marriage shall, in the life time of his or her husband or wife, marry with another person ; or if any unmarried person shall marry with a person having at the time a husband or wife living, and such circumstance be known to such unmarried person, every person so offending shall be deemed guilty of bigamy, and upon conviction thereof, shall forfeit and pay to the State a fine, not less than four hundred dollars, nor

more than two thousand dollars, and shall suffer imprisonment for a term not less than three months nor exceeding one year; and if an inhabitant of this State shall go out of the State and contract a marriage against the form and effect of the foregoing provision, with intention to return and reside in this State, and shall return accordingly, such person, notwithstanding such marriage shall be solemnized or contracted without this State, shall be liable to be indicted, tried, convicted and punished in the same manner, as if the said marriage had been solemnized or contracted within this State: If <sup>73 cohabiting after conviction</sup> any persons, after a conviction of either of them of bigamy on the ground of a marriage with the other, shall cohabit or continue to live together; each of them so offending upon conviction thereof shall forfeit and pay to the State a fine of four hundred dollars, shall suffer imprisonment for a term not less than six months nor exceeding one year, and shall be disposed of as a servant to the highest and best bidder or bidders for a period not less than two years nor exceeding seven years: but no person shall be convicted of bigamy, if the husband or wife, at the time of the second marriage, shall have been absent for five years, and during that time the accused shall have received no intelligence of his or her being alive; or if there shall have been other good ground to believe the former husband or wife dead, or if the former marriage have been legally dissolved.

If any person shall commit the crime against nature; every <sup>75 Sodomy</sup> person so offending shall be deemed guilty of felony and upon conviction thereof, shall forfeit and pay to the State a fine of one thousand dollars, shall suffer imprisonment in solitary confinement for any term not exceeding three years, and shall be whipped publicly with sixty lashes on the bare back well laid on.

If any person or persons shall pretend to exercise the art of witchcraft, conjuration, fortune telling or dealing with spirits; <sup>76 Pretenders to conjuration &c.</sup> every person or persons so offending, upon conviction thereof, shall be publicly whipped with twenty-one lashes on the bare back well laid on, and shall forfeit and pay to the State a fine not exceeding one hundred dollars.

If any person or persons (who shall either voluntarily or on taking the benefit of any law of this State for the relief of insolvent debtors make an assignment of his, her or their estate or effects for the benefit of his, her or their creditors) either upon making such assignment or previously and with the intention or in contemplation of taking the benefit of such law or of making such assignment, shall fraudulently conceal, secrete, keep back or remove, alien, assign or transfer, cancel, destroy or discharge, any of his, her or their goods, money, rights, debts, credits, effects or property, real or personal, or any bond, obligation, bill of exchange, promissory note, draft, check, order, contract, evidence of deposit, book of accounts, certificate of stock, bill of sale, conveyance or title paper belonging to or in possession of him, her or them, or shall fraudulently or collusively confess, or authorize the confession, or suffer the recovery of, any judgment against him, her or them, for any money or value not justly due or recoverable or for a greater sum or value than justly due or recoverable, or shall fraudulently or without a real, true and adequate consideration <sup>77 Fraud against creditors</sup>

execute or make to any person or persons any bond, obligation, bill of exchange, promissory note, draft, check, order, acknowledgment or any instrument for the payment of money, delivery of goods or merchandise or for transferring value, or after the making of such assignment shall fraudulently conceal, secrete, keep back or remove, alien, assign, or transfer, cancel, destroy or discharge any goods, money, rights, debts, credits, effects or property real or personal, or any bond, obligation, bill of exchange, promissory note, draft, check, order, contract, evidence of deposit, book of accounts, certificate of stock, bill of sale, conveyance or title paper, which at the time of making such assignment, belonged to or was in possession of him, her or them, or shall fraudulently or collusively confess or authorize the confession, or suffer the recovery of any judgment, or make and antedate any bond, obligation, promissory note, bill of exchange, check, order, draft, acknowledgment of debt, or contract, with the intent that such judgment, bond, obligation, promissory note, bill of exchange, check, order, draft, acknowledgment or contract shall be paid or satisfied in the whole or in any part by means of, or brought forward or set up as a demand against the property, effects, rights or credits assigned by means of such assignment or the money therefrom arising; every person, so offending, upon conviction thereof, shall forfeit and pay to the State a fine not less than five hundred dollars nor more than two thousand dollars, and shall suffer imprisonment for a term not less than three months nor exceeding one year; and moreover the discharge from imprisonment, which shall be granted to such offender upon such assignment, shall be of no avail to such offender and shall not be pleaded nor in any manner set up nor insisted upon by him or her in bar of any imprisonment, action or proceeding; and any release, receipt or acquittance given to any such offender or offenders before his, her or their conviction in pursuance or consideration of such assignment or of money raised through or by means of the same, shall avail no further than to prove the sum paid and to discharge so much of the demand to which it shall be applied; and the balance of such demand, after deducting the sum so applied, shall be in force and recoverable notwithstanding any such release, receipt or acquittance; and every such offender shall forfeit the privilege of being relieved under any law of this State for the relief of insolvent debtors and shall never have the benefit of any such law: and if any person or persons, in contemplation of insolvency or in contemplation of taking the benefit of any of the insolvent laws of this State shall make an assignment of his, her or their estate or effects, for the benefit of his, her or their creditors, and in or by such assignment, either under the provisions thereof or otherwise shall prefer any one or more creditor or creditors to another or others, or shall in or by such assignment secure or pay to any one or more creditor or creditors a greater proportion of his, her or their debt or demand, than shall be secured or paid to each and every the creditor and creditors of the person or persons making such assignment; every such assignment so preferring one or more creditor or creditors to another creditor or other creditors shall be deemed fraudulent and absolutely void; and the estate, goods, chattels

78 preferring  
creditors in  
assignment  
fraudulent

or effects, contained in such assignment or assignments, shall be liable to be taken in execution or attached, for the payment of the debts of such assignor or assignors in the same manner and to as full an effect, as if no such assignment had been made; and the person or persons making such fraudulent assignment or assignments shall forever be excluded from the benefit of all the laws of this State for the relief of insolvent debtors.

If any person or persons shall wilfully interrupt, disturb or molest any church, meeting, congregation or society assembled for the purpose of religious worship; every person so offending upon conviction thereof shall forfeit and pay to the State a fine of not less than eight dollars nor more than sixty dollars.

79 Disturbing religious meetings

If any person or persons shall institute, or be concerned in, or shall bet upon, any horse race, cock fight or shooting match, or shall knowingly sell or dispose of any rum, brandy, whiskey, wine, beer, cider or other spirituous or fermented liquor to any person or persons met or being at any place on occasion of such horse race, cock fight or shooting match, except a regularly licensed tavern keeper; every person so offending upon conviction thereof shall forfeit and pay to the State a fine of thirty dollars; no indictment shall be preferred for an offence against the foregoing provision after the expiration of six months from the day of committing the offence.

80 Horse racing, cock-fighting and shooting matches

Sect. 2. Cheats and conspiracies shall be deemed misdemeanors and shall be punished by fine, imprisonment and pillory, or by any two or either of those punishments, according to the discretion of the court: and assaults, batteries, nuisances, and all other offences indictable at common law and not provided for by this or some other Act of the General Assembly shall be deemed misdemeanors, and shall be punishable by fine and imprisonment or either according to the discretion of the court.

81 Cheats & conspiracies

82 assaults—batteries, nuisances, &c. (Nuisances)

Sect. 3. If any person or persons shall abet, procure, command, or counsel any other person or persons to commit any crime or misdemeanor; every such person shall be deemed an accomplice and equally criminal as the principal offender and upon conviction, shall be punished in the same manner and with the same punishment prescribed for every person convicted of such crime or misdemeanor; but if the principal offender be under the age of fourteen years and the crime committed not capital, the accomplice, if of full age, shall suffer the highest degree of punishment prescribed for the offence. An accomplice may be prosecuted, tried and convicted without the conviction, trial or indictment of the principal; and an acquittal of the principal shall not be a bar to the trial and conviction of the accomplice.

83 Accomplices

may be tried without indictment, &c. of principal

If any person or persons, knowing that a crime or misdemeanor has been committed, shall give any aid to the offender or offenders or either of them, with the intent, and for the purpose that he, she or they may avoid arrest or may effect his, her or their escape from arrest or from prison, from trial or from execution; every person so offending shall be deemed an accessory, and upon conviction of such offence, if the principal crime committed be punishable with death, shall forfeit and pay to the State a fine not less than one thousand dollars nor more than four thousand dollars, and shall

84 Accessories after the fact



suffer imprisonment for a term not less than six months nor exceeding one year; and in case of any other crime or misdemeanor committed, shall forfeit and pay to the owner or owners the same restitution money, and to the State the lowest fine, and shall suffer imprisonment for the shortest term which the principal offender or offenders on conviction would be liable to pay or suffer. If the principal offender or offenders shall be indicted; and if he, she or they cannot be taken or cannot be brought to trial on such indictment by reason of avoiding arrest or of escape as aforesaid, or by reason of the death of the principal offender or offenders; the accessory may be tried and convicted without the conviction or trial of the principal. But a husband or wife, for any aid afforded by either to the other, a parent or child, for any aid afforded by either to the other, or a servant or slave, for any aid afforded to a master or mistress, shall never be punished nor prosecuted as an accessory, pursuant to the foregoing provision, unless such husband or wife, parent or child, servant or slave shall break a prison or use force to prevent the arrest or aid the escape of an offender.

85 Receiver  
of things stolen  
may be  
prosecuted as  
a principal

If any person or persons shall buy, receive, or conceal any slave, horse, property, or thing in possession or action being the subject of larceny, which shall have been stolen or taken by robbery, knowing the same to be stolen or taken by robbery, every such person shall be deemed a principal offender, and may be prosecuted as such, without the conviction, trial or indictment of the principal thief or robber.

86 Compounding  
felony

If any person or persons shall take a reward to abstain from or stifle a prosecution for any crime hereinbefore declared to be felony, or shall compound any felony; every person so offending upon conviction thereof, shall forfeit and pay to the State a fine not less than one hundred dollars, nor more than two thousand dollars, and may be imprisoned for a term not exceeding three months.

87 Blasphemy

If any person shall be guilty of the crime of blasphemy; every person so offending upon conviction thereof shall forfeit and pay to the State a fine not exceeding fifty dollars, and shall suffer imprisonment, in solitary confinement for any term not exceeding two months, and may, in the discretion of the court, be required to find sureties for good behaviour for one year after discharge from prison.

88 Supplying  
liquor to convicts,  
or aiding their  
procuring it

If any sheriff, gaoler, or other person or persons shall provide or supply to or for any convict suffering imprisonment in the gaol in either of the counties of this State as a part of his or her punishment or shall aid or assist such convict to procure or obtain any wine, cider, perry, rum, brandy, whiskey, porter, ale, beer or other spirituous, expressed or fermented liquor; or if any sheriff or gaoler shall, knowingly, permit or suffer any such convict to procure, obtain, or have any such liquor as before described or mentioned; or if any sheriff or gaoler shall not use all due diligence and care to prevent any such convict from procuring, obtaining or having any such liquor; every sheriff, gaoler, or other person, so offending for every such offence, on conviction thereof, shall forfeit and pay to the State a fine not less than fifty dollars nor more than one hundred dollars; and every gaoler so offending, upon conviction, shall be displaced; and every sheriff, so offend-

89 or sheriff or  
gaoler permitting  
it to be  
furnished

ing a second time shall, for such second offence, forfeit and pay to the State a fine of one hundred dollars, and for a third or subsequent offence, a fine of two hundred dollars: provided that any liquor prescribed by the physician attending at the gaol, as medicine, may be supplied, but every such prescription shall be in writing.

If any person, who shall be convicted of any offence against any clause or provision of this Act, a part of whose sentence shall be to wear any letter of any dimensions or color and in any manner for a badge of his or her crime, shall neglect or refuse fully to comply with such part of said sentence, or shall be seen at any time in the period, during which he or she shall be sentenced to wear such letter, without the same worn as by such sentence directed; every person so offending, upon conviction of such offence, shall forfeit and pay to the State a fine of twenty dollars, and shall be publicly whipped with ten lashes upon the bare back well laid on: and it shall be the duty of every Justice of the Peace, grand juror, or constable, knowing, or hearing of any offence against the foregoing provision, to give information thereof, so that the offender may be prosecuted: the foregoing clause shall be read to every convict, whose sentence it may concern, upon such sentence being pronounced, and the import thereof plainly declared to him.

SECT. 4. The punishment of death shall in all cases be inflicted by hanging by the neck, at such time as the court shall appoint, not less than ten days after pronouncing the sentence; but the Governor may suspend the execution until a more distant day by him to be appointed, and from day to day, as he shall deem his duty, under the circumstances, to require; but the Governor in every act suspending execution of a sentence of death shall appoint a day for doing such execution, and specify two hours, between which it shall be done: it shall be the duty of the Sheriff or his deputy or in case the office of Sheriff be vacant, of the Coroner or his deputy to observe and execute sentence of death at the time appointed by the court; and a certified copy of such sentence shall be his sufficient warrant, unless the execution shall be suspended by the Governor; and in that case the act or warrant of the Governor shall be observed and obeyed.

The Clerk shall deliver to the Sheriff, or in case of vacancy in the office of Sheriff, then to the Coroner, a duly certified copy of every sentence of death or other sentence in a criminal case.

In every case, in which corporal punishment is to be inflicted, the court in the sentence shall assign the day thereof; and whenever imprisonment shall be a part of the punishment, the court in the sentence shall specify the day, on which the term shall commence, and also the day on which it shall expire. In reckoning months, every month shall be a calendar month; and a term of months of imprisonment shall be so many calendar months and shall expire upon the same numerical day (including the same) of a calendar month, upon which it shall have commenced; and an act, to be done at the expiration of a term of imprisonment, shall be done on the last day thereof, unless such day should be the Sabbath; then such act shall be done on the day previous. Notice shall be given of the

90 Convict not wearing letter—badge of his crime

91 Duty of Grand Jurors, Justices of the Peace & Constables

92 this paragraph read to convict

93 Punishm't of death, how and by whom inflicted (158)

94 Cl'k to deliver copy of sentence

95 Sentence of corporal punishment (158)

96 How months computed

97 Notice of

disposal of  
persons as  
servants

disposal of every person as a servant for at least ten days before the day of disposal by advertisements posted in at least two of the most public and suitable places in the county town, and in at least ten other of the most public and suitable places in the county; in reckoning this time, the day of disposal and the day of posting the advertisements shall be excluded; the Sheriff or Coroner shall make return of the disposal of every person, who shall be by him disposed of as a servant, and of the sum obtained:

98 application  
of proceeds

The money obtained upon the disposal of every person as a servant shall be applied in the first place, in payment of the costs of prosecution; any balance remaining shall be applied in payment of restitution money, if any, or in payment of any fine; and any balance, not applied otherwise, shall be paid to the State Treasurer.

99 Powers &  
rights of mas-  
ter

Sect. 5. If any person shall be disposed of as a servant as a part of his or her punishment according to this Act the person or persons, to whom such disposal shall be made, shall, during the period of servitude, be entitled to all the labor, service and earnings of such servant, and shall have all the power and authority of a master or mistress over such servant, and may carry, and export such servant out of this State into any other State for sale or otherwise; and the servitude of such servant shall be assignable from person to person and transmissible to executors and administrators; and any assignee, executor or administrator shall have the same rights, authority and power, and the same right to export such servant out of this State into any other State for sale or otherwise, during the period of servitude, as the person or persons, to whom such servant was at first disposed of; and, during the term, for which such person shall be so ordered to be disposed of as a servant, such person shall not be considered or deemed to be a freeman in this State: excepting only, that if the sentence pursuant to any clause or provision of this Act shall be, that the person, to be disposed of as a servant, shall be disposed of to a person or persons residing within this State, then such servant shall not be exported or carried out of this State for sale or otherwise and shall not be sold in this State with intent to be so exported.

100 Disability  
of convicts of  
felony

Sect. 6. If any person shall be convicted of a crime deemed felony according to this Act, such person shall be forever disqualified and incompetent to be a witness on any occasion, or to make an affidavit, or to take an oath or affirmation, except to an answer in the Court of Chancery when expressly required by that court, or to make probate of debts, demands or accounts due to him or her from the estate of any deceased person; and it shall not be lawful to administer an oath or affirmation to such person, except as before excepted.

101 Where  
offences in-  
quired of &  
tried

Sect. 7. Indictments for offences shall be found and trials thereof shall be had in the county, wherein the offence shall be committed, subject to the following exceptions and regulation; that is to say; in every case of bigamy the indictment may be found and the trial had in the county, in which the offender shall reside, or be apprehended; in every case of murder and of manslaughter, if a person be poisoned or wounded in one county and die of such poisoning or wounding in another county, the indictment shall be found and the trial shall be had in the county, wherein such person

was poisoned or wounded; and in like manner whenever the cause producing the death of a person shall happen in a county and the death out of it, the offence shall be deemed complete in the county wherein the cause shall happen, and shall there be inquired of, heard and determined: If any person shall in one county abet, procure, command or counsel another to commit a crime or misdemeanor, and such crime or misdemeanor shall be committed in another county; or if a crime or misdemeanor be committed in one county, and a person knowing thereof shall, in a different county, aid the offender to avoid arrest or to escape; every person so offending may be indicted and tried in the county, in which the principal crime was committed; and generally every accomplice and accessory in or to an offence may be indicted and tried in the county wherein such offence shall be committed, without respect to the county wherein he or she may have become or been such accomplice or accessory; the receiver, buyer or concealer of stolen or robbed goods, property or things being the subjects of larceny, knowing the same to be stolen or taken by robbery, may be indicted and tried either in the county wherein the larceny or robbery was committed, or in the county in which such property, goods or things were bought, received or concealed; and if property, goods or things the subjects of larceny be stolen in this State in one county and carried into another county by the thief; the offender may be indicted and tried in either of said counties; for the offence shall be deemed complete in each county; and the stealing, taking and carrying away may be laid in either: but the court, upon application made by or on behalf of a person indicted, shall for sufficient cause shown change the venue and order the trial upon the indictment to be had in the county, which they may deem proper to assign for that purpose.

102 but court may change venue

Sect. 8. If any person indicted for a capital or other crime or misdemeanor upon being arraigned on the indictment shall obstinately and on purpose, stand mute, or neither confess the said indictment nor answer or plead matter or plea allowable according to law; the court shall proceed to the trial of such person upon said indictment, in the same manner, as if he or she had pleaded not guilty, and issue had been thereupon regularly joined; and the verdict of the jury shall be available and effectual to all intents and purposes and judgment shall be thereupon rendered accordingly: and the court may either determine for themselves, upon view, whether such person stand mute obstinately and on purpose; or they may, to assist them empanel a jury to inquire, whether such person stand mute obstinately and on purpose, or by the providence and act of God; and the finding of said jury, being approved by the court, shall be recorded.

103 Standing mute

Sect. 9. A person indicted for a crime punishable with death shall, upon trial upon such indictment coming on, have right to challenge twenty of the jurors summoned peremptorily, but no more except for lawful cause; and a person indicted for any other crime or misdemeanor shall have right to challenge six of the jurors summoned peremptorily, but no more except for lawful cause, or except as is hereinafter provided; if several indicted in one indictment be tried together by consent or according to course

104 Peremptory challenges in capital cases

105 in cases not capital

106 in cases where several defendants are tried together

of law, each shall not be allowed the whole number of challenges, but all joined in the same trial shall be allowed in a capital case only twenty, and in any other case only six peremptory challenges: if a person indicted, on the trial coming on, insist upon challenging peremptorily a greater number of the jurors, than can be lawfully so challenged, the court shall proceed with the trial, and the jurors shall be sworn or affirmed, without respect to such irregular challenging: on the trial of any indictment for any offence not capital, which shall hereafter be brought on in any Court of General Quarter Sessions of the Peace and Gaol Delivery within any county in this State, the Attorney General of the State or officer prosecuting such indictment on behalf of the State may challenge, without showing cause, any juror or jurors drawn for such trial not exceeding three in number; provided however, that in all cases, where the State shall exercise its right to challenge, the prisoner or defendant shall be entitled to challenge as many jurors, in addition to six, as the State shall so challenge.

107 in behalf  
of the State

108 Form of  
indictment  
for man-  
slaughter

Sect. 10. The different degrees of manslaughter shall be distinguished in indictments by adding to the common form of indictment for manslaughter, after the words "feloniously did kill and slay," a clause in substance as follows, viz: *and therein did commit manslaughter of the* degree, *against the peace and dignity of the State and the Act of the General Assembly in such case made and provided*, inserting in the blank the degree; no further departure from the common form shall be requisite.

109 Indictm't  
for murder or  
highway robbery  
Conviction of  
manslaughter

A person indicted for murder may be found guilty of either degree of manslaughter; a person indicted for manslaughter of the first degree may be found guilty of manslaughter of the second degree; a person indicted for robbery on or near the highway or in a dwelling-house may be found guilty of simple robbery; and such convictions shall be as effectual, as if the indictments had been for the crimes, whereof the person indicted shall thus be found guilty.

110 Indictm't  
for forgery

In an indictment for forgery, it shall be sufficient to set forth the substance of the instrument, whereof the forgery shall be alleged.

111 for perjury

In an indictment for perjury, it shall be sufficient to set forth the substance of the offence charged, stating before whom or in what court the oath or affirmation was administered or taken, the general nature of the cause or proceeding, with the names of the parties, and proper averments to falsify the matter, wherein the perjury shall be assigned, without setting forth the bill, answer, indictment, declaration or any part of any record either in law or equity other than as aforesaid and without setting forth the commission or authority of the court or person or persons, before whom the perjury was committed.

112 Allegation of "free negro or free mulatto"

In an indictment for larceny or for receiving goods stolen or taken by robbery, knowing the same to be so stolen or taken, against a person other than a free negro or free mulatto, it shall not be necessary to aver such person to be "other than a free negro, or free mulatto;" but a person indicted, if not averred to be a free negro or free mulatto, shall upon the face of the indictment be deemed and taken to be "other than a free negro or free mulatto," and up-

on conviction shall be considered accordingly: An indictment against a free negro or free mulatto must aver the person indicted to be such.

If a person for a second or other offence be liable to a greater punishment, it shall be the duty of the Attorney General to inquire of the premises upon every accusation of a crime or misdemeanor of this nature; and if the offence committed be a second or subsequent offence, to draw the indictment with proper averments to subject the offender to the punishment by law provided in that behalf: To constitute an offence a second offence, it is not sufficient that a like offence had been previously committed; but there must be a conviction of the first offence before committing of the second.

113 Indictment for second offence

Sect. 11. That the benefit of clergy be and hereby is abolished.

114 Benefit of clergy abolished

Sect. 14. If it shall satisfactorily appear to the court, in which any conviction shall be, that the person or persons convicted is not or are not able to pay the restitution money or fine and the costs, which he, she or they, pursuant to such conviction, shall be adjudged to pay, and if it be not a part of the punishment that such person shall be disposed of as a servant; then the said court shall have power to order that every such person shall be disposed of as a servant to any person or persons residing in this State for the highest sum that can be obtained, for such term as shall be necessary in order to raise sufficient money to satisfy such restitution money or fine and costs or any balance remaining after such payment as can be obtained from the person convicted; provided that such term shall not exceed seven years: any person or persons, to whom such disposal shall be made, shall, during the term of servitude, have all the rights, power and authority of a master or mistress over such servant; and the term of servitude shall be transmissible and assignable; but the servant shall not be exported from this State nor transferred with that intention.

115 Convict unable to pay may, by order of court, be disposed of as a servant (123)

The clerk shall deliver to the sheriff a certified copy of every such order and shall thereon indorse the restitution money or fine and all the costs specifying the items: the sheriff immediately after the disposal shall return such copy and thereon shall certify the disposal made, the person or persons to whom, and the sum of money bid and obtained; and this return with the day thereof shall be entered by the clerk on the docket of the order: The Clerk of the Peace and the Clerk of the Court of Oyer and Terminer and General Gaol Delivery shall annually in the last week in December report to the State Treasurer the respective sums due from the sheriff upon disposal of persons under the judgment or order of their respective courts, after costs and charges deducted; and such report shall distinctly set forth the sum of money obtained and the fine and the costs in each case. If the sum of money obtained on the disposal of a person as a servant, whether pursuant to an order or a judgment, shall not be sufficient to pay the restitution money or fine and costs; the costs shall be first paid; but if there be not sufficient to pay the costs; the court, in which the case shall be, shall cause a list of the fees of officers and witnesses remaining unpaid after just application of the money obtained to be made by the clerk; which list shall shew the money obtained, the whole costs and the application of the money; and the same be-

116 Duty of Clerk in respect to such order

117 Application of the money

118 Fees unpaid, list transmitted to Levy Court

119 and to  
Auditor of  
accounts

ing signed by the Chief Justice shall be by him transmitted to the Levy Court and Court of Appeal of the county, who shall raise the money requisite to defray the costs remaining unsatisfied, and the clerk shall draw orders upon the County Treasurer in favor of the officers and witnesses respectively, whose fees shall remain unpaid, for such fees; and such orders shall be paid out of funds in the hands of such Treasurer; a list of all which orders so drawn by any clerk shall be by him transmitted to the Auditor of accounts annually in the last week in December. But if the disposal of a person as a servant shall be deferred for more than six months according to the judgment, the costs shall be allowed, if they cannot be obtained otherwise, directly by the Levy Court.

120 Neglect  
of this duty a  
contempt

If a sheriff or clerk shall neglect the duty before prescribed, it shall be a contempt of the court in which the judgment or order shall be.

121 Convict-  
ed felons kept  
at labor

Sect. 15. If any person shall be convicted of a crime deemed felony according to this Act and shall be sentenced to suffer imprisonment as a part of the punishment for such crime; it shall be lawful for the sheriff or keeper of the gaol, where such felon shall be so imprisoned, to keep such felon employed in such work or labor, within the walls of the prison, as he may deem reasonable; and the profits of such labor shall be applied to and for the use of the county.

122 property  
of person dis-  
posed of as  
servant, liable  
for any bal. of  
judgment

Sect. 16. The disposal of a person as a servant, whether pursuant to a judgment or an order of court, shall not discharge the property real or personal of such person, or that may ever come to him or her, from lien and liability to answer any part of the restitution money, fine and costs remaining unpaid, after application of the money raised by such disposal.

123 Penalty  
for exporting  
&c. a servant  
whose sen-  
tence was to  
be disposed of  
to a person re-  
siding in this  
State

Sect. 17. Whenever by a judgment of court and for punishment, or by an order of court and for payment of restitution money or fine and costs, according to this Act, it shall be adjudged or directed that a person convicted of a crime or misdemeanor shall be disposed of as a servant to any person or persons residing in this State, and such convicted person shall accordingly be disposed of as a servant by virtue of such judgment or order; if any person or persons during the period or term of servitude of such servant shall export or convey such servant out of this State to any other State or place for sale or otherwise, or shall transfer or assign such servant to any person residing at the time out of this State, or shall assign or transfer such servant or agree to do so with intent, that such servant shall be exported out of this State to any other State or place for sale or otherwise; every person so offending, upon conviction thereof, shall forfeit and pay to the State a fine of five hundred dollars; and such servant shall thereby be enfranchised and become and be free and absolutely discharged from such servitude; provided that the Supreme Court or Court of Common Pleas, in term time in the county wherein such servant shall be held, shall have power upon a proper case made to grant license to the master or mistress of any such servant to export him or her or to transfer him or her for the purpose of being conveyed out of the State; and such license shall be a sufficient

warrant for so doing, any thing, herein before contained to the contrary notwithstanding; provided that nothing in this Act contained shall be construed to hinder or prohibit any person, going a journey, from taking such servant as aforesaid with him or her, as a servant, nor any person removing with his or her family out of the State from removing such servant.

*Passed at Dover, 8 February, 1826.*

## VI.

*AN ACT concerning certain crimes and offences committed by slaves, 1827  
and for the security of slaves properly demeaning themselves.*

Section 1. 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 misdemeanors" 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.

124 Capital crimes of slaves (13. 11. 24. 27 30. 36.)

The value of a slave found guilty of a crime punishable with death 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.

125 Value of such slave, convicted—assessed

Sect. 2. 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 administer 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 house 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,

126 Certain felonies of slaves



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 publicly 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,

127 Other offences of slaves made felonious

(128)

128 Slave aiding master &c

Sect. 3. 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 misdemeanors 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 either of said particulars, shall be deemed guilty of felony and, upon conviction thereof, shall be publicly 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.

129 Jurisdiction of the Courts of Quarter Sessions

Sect. 4. 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 inquired of, heard and determined in the same manner and by the same modes of proceeding as other crimes whereof the said courts have jurisdiction.

130 Slave sentenced to be exported delivered to master, &c.

Sect. 5. 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, forth-*

*with. and without being suffered to be at large in this State, he 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 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. 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.*

131 or sold by Sheriff

132 Slave exported returning to the State

*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.*

133 When slave is not exported according to bond

*If any person or persons shall hinder, molest or obstruct any person or persons in or from exporting from this State any slave, which shall be under sentence to be exported as aforesaid, or shall*

134 Penalty for obstructing, &c. the exporting of

slave sentenced to be exported

wittingly harbor 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.

135 Larceny by slaves

(139)

(137)

Sect. 6. 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 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 delivered, to deliver to the master or mistress of said slave a copy certified by said constable of said process, or 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 indorse 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 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

136 Notice by Constable to master, of warrant

137 Indorsement by Justice appearance of master or oath of constable

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.

138 Master's right to redeem slave

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 merchandise.

139 "Personal property" - signification

Sect. 7. 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.

140 Notice of sale of slave (c7)

Sect. 8. 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 less than ten nor more than forty lashes, publicly upon the bare back.

141 Riots, unlawful assemblies, assaults & batteries on white persons carrying guns &c. by slaves

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 publicly 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.

142 Assault & battery—slave on negro &c.

In every case of a conviction under this section, the Justice shall give judgment in favor 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.

143 Master to pay costs

Sect. 9. 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

144 Exporting, &c. slaves

145 Bringing  
in of slaves  
(Slaves-1)

146 excep-  
tions

147 Slaves  
unlawfully  
exported, &c.  
or brought in,  
free

148 Saving of  
the rights of  
the master  
when not im-  
plicated, &c.

149 Proviso

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 territory, 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 through 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.

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 accessory to, said misdemeanor: *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 oppress or affect any privilege heretofore granted or allowed by any Act of Assembly to any person in respect to any slave or slaves.

Sect. 10. If any vessel or boat shall be brought into, or prepared or stationed in, any harbor 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 ninth 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 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.

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

(Fees—12)

Sect. 11. The term "slave," as used in this Act shall be con- 151 A slave

within this  
Act  
(Negroes &  
Mulattoes  
12--15)

strued 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.

*Passed at Dover, February 7, 1827.*

## VII.

1829 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.]

152 Man-  
slaughter of  
the first de-  
gree  
(17)

Section 1. 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.

153 Second  
offence

154 Man-  
slaughter of  
the second  
degree  
(18)

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.

(V.)

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.

155 when  
committed by  
slaves

Sect. 2. 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 shall, upon conviction thereof,

be publicly whipped with any number of lashes not less than twenty nor more than forty.

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. (124) (VI.)

Sect. 3. The Courts of Oyer and Terminer and General Gaol 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 accessory 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 Gaol Delivery, shall have cognizance of crimes punishable with death and of manslaughter and of offences of accomplices or accessories 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. 156 Jurisdiction of the Court of Oyer & Terminer

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. 157 of the Ct. of Qu'r. Sess. 158 Assignment of counsel by the court

*Passed at Dover, February 11, 1829.*

### VIII.

AN ACT obliging persons returned and appointed for Constables, to serve accordingly, and for ascertaining their fees. 1770

Section 9. No negro or mulatto shall be employed by any constable or other officer within this government, to whip or inflict any corporal punishment on any white person or persons in any case whatsoever. 159 No negro or mulatto to be employed to inflict corporal punishment

*Passed November 3, 1770.*

### IX.

AN ACT concerning the conducting of criminal prosecutions in certain cases. 1827

Section 1. If at any Court of Oyer 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, 160 Power of court to appoint a depu-



## DITCHES.

ty of Attorney General such court shall appoint a deputy of the Attorney General for the occasion; 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.

*Passed at Dover, January 26, 1827.*

## DITCHES.

## I.

1816 AN ACT to authorize and empower the owner or possessor of any swamp or low ground to ditch and drain the same, and for rendering more easy and convenient the mode of obtaining permission therefor.

1 Freeholders  
appointed

Section 1. The Justices of the Court of Common Pleas at their sessions in the several counties of this State, so often and whenever any person or persons being the owner and possessor of any swamp or low ground in the county, in which the said court shall be sitting, shall apply to the said court for an order to ditch and drain the same, are hereby authorized and required to make an order and to appoint three good and substantial freeholders of the county and neighborhood, in which such swamp or low ground intended to be drained shall lie, to go upon and view such swamp or low ground, for the draining of which application is made.

2 Their oath

Sect. 2. The freeholders appointed as aforesaid, before they shall go upon and view any lands intended to be ditched or drained, shall be sworn or affirmed before some Judge or Justice of the Peace of the county faithfully and impartially to the best of their skill and judgment to perform the several duties enjoined on them by this Act; and the said freeholders shall then go upon and view the swamp or low ground mentioned in such order, and if they deem it fit and necessary, shall with the assistance of a surveyor appointed by them and sworn or affirmed in manner aforesaid, proceed to lay out a ditch or drain of such breadth, depth, length, course or courses, distance or distances, as will be sufficient to clear any swamp or low ground of water, that by such order is intended to be drained.

3 Powers &  
duties  
(17)

Sect. 4: If in the cutting and clearing out any ditch or drain to be laid out as aforesaid, it shall appear to the freeholders appointed to lay out the same, that any person or persons, through or upon whose land the same shall have been laid out, is thereby injured, they shall assess such damages to the person or persons so injured, as to them shall seem just and reasonable, to be paid to such person or persons by the petitioner or petitioners for the laying out such ditch or drain; and every report directed to be made in manner aforesaid shall contain the name or names of each and

4 damages to  
persons injured

every person, to whom any damages shall have been adjudged, with the amount so adjudged or assessed to each and every such person or persons.

Sect. 5. If any person or persons through or upon whose land any ditch or drain shall be cut, cleared out and completed, shall derive therefrom or receive any benefit thereby, the freeholders to be appointed in manner aforesaid shall adjudge thereof and shall assess by way of tax or taxes on such person or persons respectively, by them respectively to be paid [to the person or persons cutting, clearing out and completing every ditch or drain laid out in manner aforesaid, a fair and reasonable sum proportioned to the benefit or advantage, they may thereby respectively receive, or to the person or persons, their heirs, executors or administrators, who shall cut, clear out and complete or cause to be cut, cleared out and completed, any such ditch or drain ;] which said money assessed or taxed as aforesaid shall be exclusively appropriated by the person or persons receiving the same to defraying the expenses incurred in laying out, cutting and completing every such ditch or drain, for which such money shall have been taxed or assessed : and after defraying the expenses incurred for laying out, cutting, clearing out and completing any ditch or drain in pursuance of this Act, if any surplus of the money taxed for the same shall remain on hand and unexpended, the person or persons, in whose hands the same shall be, shall, immediately after a final settlement of the expenses attending the cutting any such ditch or drain, pay over without delay to the person or persons taxed with the expenses of the same, their heirs, executors or administrators, their fair and just proportion of such surplus to be regulated and paid to them respectively in such proportion, as they shall have been taxed for such expenses.

5 Taxes  
(16)

(19. 22)

6 Surplus re-  
paid, &c.

Sect. 6. Before any return made by any freeholders appointed to lay out any ditch or drain agreeably to the provisions of this Act shall be confirmed by the Justices aforesaid, the petitioner or petitioners or some one or more of the person or persons, their heirs or assigns, who is or are by the said return made chargeable with the expenses or any part thereof, shall make it appear to the satisfaction of the said Justices, that the damages assessed by the freeholders to the person or persons named in such return has been paid or tendered to be paid to such person or persons, their heirs, executors or administrators respectively either in specie or current bank notes of this State.

7 Damages  
paid before  
confirmation

Sect. 7. Every ditch or drain that shall be cut, cleared out and completed in pursuance of this Act shall always remain open for the benefit and advantage of the petitioner and such other person or persons, their heirs and assigns, as the freeholders in their report shall return as being benefitted thereby and chargeable with the expenses of the same : And every ditch and drain cut and completed as aforesaid shall be kept open, cleaned and repaired at the expense of the petitioner or petitioners and such other person or persons, their heirs or assigns, as by the return thereof is made chargeable with the original expense of the same, in such proportion as the original expense thereof shall have been respectively assessed.

8 Ditch or  
drain shall re-  
main open &c

9 How kept  
open & repai-  
red

10 Penalty  
for stopping

Sect. 9. If any person or persons whatsoever shall stop up any ditch or drain, that shall be cut in pursuance of the provisions of this Act, every such person or persons so offending and being thereof convicted before any one Justice of the Peace of the county, wherein such ditch or drain shall have been cut, upon the oath or affirmation of one or more credible witnesses, he, she or they so offending shall forfeit and pay for every such offence a sum not less than two dollars nor more than twenty dollars, to be recovered by the petitioner or petitioners, their heirs, executors, administrators or assigns to be applied to the cutting, cleaning, repairing or keeping the said ditch or drain in good order and repair.

11 Order of  
review

Sect. 10. If any person or persons, through or upon whose land any ditch or drain shall be laid out, conceives him, her or themselves to have sustained more or greater injury thereby, than the damages therefor assessed, on application by him, her or them made to the Justices, who granted the order for laying out the same, the said Justices may, at their discretion, order a review thereof and appoint other disinterested freeholders to go upon and view the swamp or low ground and if necessary lay out the site of a ditch or drain and do every matter and thing herein before directed to be done by freeholders, and the same to report to the said Justices in manner and form herein before directed.

12 Fees

Sect. 11. Every freeholder appointed by this Act shall have and receive for each and every day he shall attend in viewing any swamp or low ground and in laying out any ditch or drain in pursuance of the provisions of this Act, one dollar; and the clerk of the court aforesaid, for every order made and certified under the seal of his office as aforesaid, one dollar; and for reading the report, indorsing the confirmation of the court thereon, and filing the same of record, fifty cents, and no more; to be paid to the said freeholders and clerk by the person or persons, their heirs, executors or administrators, applying for such order.

13 Vacancies

Sect. 12. If any freeholder appointed as aforesaid to view any swamp or low ground, and to lay out any ditch or drain, in pursuance of the provisions of this Act, shall die, refuse or neglect to serve or remove out of the county or be otherwise rendered incapable of acting, it shall and may be lawful for the nearest Justice of the Peace in the county, where such lands lie, on application to him made for that purpose to appoint one or more suitable person or persons, being a freeholder or freeholders of the Hundred; to fill such vacancy, and certify the same under his hand to the court, to which the order wherein such vacancy shall have been made, in manner aforesaid, is by this Act made returnable. And the said order, with the report thereon, shall by the said court be received and acted upon in the same manner, as if all the freeholders had been appointed by the court aforesaid, and as if no vacancy had ever been made or happened in the appointment of the freeholders named in such order.

14 Work not  
begun or com-  
pleted in 7  
years

Sect. 13. Whenever an order of court shall be obtained by any person or persons for ditching and draining any low lands, agreeably to the provisions of this Act, the authority and powers granted by the said order shall cease and determine unless the laboring work shall have been commenced within two years from the

date of the confirmation of said order ; and in every case where the work shall have been begun within two years as aforesaid and the same shall not be completed within seven years thereafter, it shall not be lawful for any person or persons to proceed further in the prosecution of said work, unless they shall first obtain an order of court in the same manner, as is herein directed to be obtained in the case of the original application.

Sect. 14. Nothing herein contained shall be deemed, taken or construed to extend to, or in any manner whatever affect any person or persons who have heretofore obtained any special law for ditching or draining any low ground, swamp or cripple within this State nor to affect, alter or change any provision that is made in any special law for that purpose. 15 Special Acts

*Passed at Dover, 5 February, 1816.*

## II.

**A SUPPLEMENT** to an Act entitled "*An Act to authorize and empower the owner or possessors of any swamp or low ground to ditch and drain the same and for rendering more easy and convenient the mode of obtaining permission therefor.*" 1817

Whereas by the fifth section of the act of the General Assembly, to which this is a supplement, it appears that no person can be taxed or made chargeable with any part of the expense nor can any person be entitled to receive any damages directed by the above recited act to be levied, assessed and collected, other than such person or persons, through or upon whose lands any ditch or drain may be cut, cleared out and completed under and by virtue of the said Act of Assembly : for remedy whereof :— (4. 5.)

Section 1. Any person or persons, who shall or may receive any benefit or who shall or may sustain any injury by reason of any ditch or drain, that shall or may be cut under any order of the Court of Common Pleas, that has already been granted or that shall hereafter be granted on any application made under the provisions of the Act, to which this is a supplement, although the said ditch or drain shall not be laid out, cut and completed on any lands benefitted or injured thereby, the freeholders, appointed to lay out the same, shall adjudge thereof, and shall tax each and every person benefitted and assess damages to every person injured thereby, to be collected and paid in the manner directed by the fifth section of the Act to which this is a supplement. 16 Taxes for benefit and damages for injury—tho' ditch not on the land

*Passed at Dover, 4 Feb. 1817.*

## III.

**A SUPPLEMENTARY ACT** to the Act entitled "*An Act to authorize the owner or possessor of any swamp or low ground to ditch or drain the same and for rendering more easy and convenient the mode of obtaining permission therefor.*" 1819

Section 1. The freeholders appointed in the manner as directed by

17 Proceed-  
ings of Free-  
holders

the Act to which this is supplementary, are hereby authorized and required to call to their assistance a skillful surveyor and, after having viewed and located the boundaries of the swamp or low ground mentioned in the order made for the ditching and draining thereof and after having ascertained the boundaries of the respective lots contained within the limits of the swamp or low grounds so to be ditched and drained with the course or courses, distance or distances, width and depth of the ditch or ditches, drain or drains, the quantity and quality of the swamp or low ground, which each owner or possessor holds, and estimated the probable cost or expense of cutting or effecting the ditching and draining the swamp or low ground and the amount or sum each owner or possessor shall be bound to pay thereof, they the said freeholders shall, with the assistance of the said surveyor, proceed to make a report in writing, under their hands, with a plot or map fairly made and thereto attached, containing a description of the courses and distances of the boundary lines of the swamp or low ground mentioned in said order, with the courses and distances of each owner's or possessor's lot or piece of swamp or low ground, and the quality and quantity thereof, also the sum or amount each owner or possessor shall be bound to pay of the tax so to be levied, and after completing the said report and plot, shall return the same to the Justices of the Court of Common Pleas at their next ensuing session to be held in the county, where said swamp shall lie.

18 Meeting of  
the taxables  
(24)

Sect. 2. The freeholders appointed under any order as aforesaid shall, within one month after the confirmation of the report made as aforesaid, call together the taxables of the swamp or low ground intended to be drained, at some convenient place in the neighborhood of the swamp or low ground, by advertisement stating the time and place of meeting set up in four of the most public places of the Hundred, in which said swamp or low ground shall be, for the purpose of choosing two fit persons as managers and one fit person as treasurer, to hold their respective offices for the term of one year or longer should no persons or person be appointed to supply their place or places.

19 Managers  
& Treasurer  
(25)

20 List of  
taxes to be  
delivered to  
Treasurer

Sect. 3. The freeholders shall and they are hereby required to deliver to the treasurer appointed as herein before directed a statement of the taxes levied on the swamp or low ground intended to be ditched and drained, with the respective tax or sum, which each owner or possessor may be individually bound to pay.

21 Duties of  
Managers

Sect. 4. The managers, appointed in manner aforesaid shall proceed to ditch and drain the swamp or low ground, for which they were appointed managers, by employing such ditchers or other laborers and making such other provisions as may be by them deemed necessary for effecting the object intended: the said managers shall keep a fair and regular account of all expenses incurred, and report the same yearly to the freeholders; they shall draw orders on the treasurer in favor of those having claims for services rendered or articles furnished in relation to said ditching and draining; the said managers shall each have and receive one dollar for every day they shall be actually engaged in the discharge of the duties of their office to be paid them by the treasurer.

Sect. 5. That the treasurer appointed as herein directed be authorized, empowered and required to ask for, demand and collect all moneys levied for the purpose of effecting said ditching and draining; and in case of refusal or neglect of any person being bound to pay the same, then and in that case the treasurer shall proceed to collect and recover the same in the way and manner that county rates and levies are made recoverable by the existing laws of this State; the treasurer shall settle annually with the owners or possessors of the swamp or low ground or with such committee appointed by the owners or possessors of the swamp or low ground ditched and drained or intended so to be, the amount of his receipts; the treasurer shall be entitled to retain five per centum on the amount of his receipts as compensation for all his services.

22 duty and power of Treasurer

Sect. 6. The treasurer shall give bond and security in double the sum assessed and levied upon the swamp and low grounds so to be ditched and drained, to the owners or possessors of the swamp or low ground intended to be ditched and drained, for the faithful performance of the duties reposed in him, and at the expiration of his office to pay over any money in his hands as treasurer to his successor.

23 to give bond to owners, &c.

Sect. 7. The owners or possessors of the swamp or low ground shall (or so many as see proper to attend) meet at some convenient place in the neighborhood of the swamp or low ground intended to be ditched and drained, on the first Monday in March in every year after the expiration of one year from the confirmation of the report of the freeholders appointed by any order as aforesaid, which time and place of meeting shall be advertised by the managers, and in case of their neglect by any two of the owners or possessors of the swamp or low ground, when and where they shall appoint the managers and treasurer and do and perform such other things as may be enjoined on them by the provisions of this Act.

24 annual meeting

25 appointing Treasurer and Managers

*Passed at Dover, 6 February, 1819.*

—0—

## DOGS IN NEW-CASTLE COUNTY.

### I.

*AN ACT to prevent injury by dogs in New-Castle County.* 1811

Whereas, the frequent depredations committed by dogs upon sheep, greatly tend to discourage the raising of that valuable, and in our present situation, highly important and necessary animal,

1 Dog killing sheep

Section 1. If any dog or dogs shall kill or wound any sheep or lamb, the owner or possessor of such dog or dogs shall pay to the owner of such sheep or lamb the value thereof to be recovered with costs of suit in such manner, as damages to an equal amount are now recoverable by the laws of this State; and further, it shall be lawful for any person, who shall see any dog worry, wound or kill any sheep or lamb, to kill such dog.

2 Dogs worrying sheep may be killed

3 Not to extend to Kent & Sussex Sect. 5. none of the provisions of this Act shall extend to the counties of Kent and Sussex.

*Passed at Dover, February 4, 1811.*

## II.

1820 AN ADDITIONAL SUPPLEMENT to the Act entitled "*An Act to prevent injury by dogs in New-Castle county.*"

4 Dogs at large without collar, &c. in New-Castle county may be killed

Section 2. It shall be lawful, after the first day of May next, for any person or persons to kill any dog or slut running at large in New-Castle county beyond the owners premises, without a collar affixed around its neck, having the initial of the christian and the whole of the sur-name of the owner thereof legibly inscribed thereon.

*Passed at Dover, 2 February, 1820.*

## DOWER, PARTITION AND WASTE.

### I.

1820 AN ACT concerning dower, partition and waste.

1 Writ served in Dower and Partition

Section 1. 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

2 Penalty on tenant not notifying landlord

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

3 Judgment by default

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

5 Damages in dower

view shall be granted; the demandant shall recover reasonable damages for the detention of her dower, which damages 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.

6 Freeholders to assign dower or make partition

7 Surveyor

8 Return

9 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.

10 Costs

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."

11 In partition a share laid off to several

Sect. 2. 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, (a) as in laying off the widow's part of the lands, tenements or hereditaments of an intestate.

12 Dower—proceeding costs

(35) a (Intestate's real estate—40)

Sect. 3. 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.

13 Bar of Dower

Proviso

Sect. 4. If a wife willingly leave her husband and go with an

14 Dower



- forfeited 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.
- 15 Partition Sect. 5. 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 :
- 16 Writ — 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 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 severally in fee simple (or other estate as the case may be) and — of the said parts to the said — to hold to him in severally 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 —*
- varied or 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.
- 17 Judgment by default Upon a judgment by default the court shall not be confined to the statement in the 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.
- 18 Use & occupation at st. of joint tenants, &c. 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.
- 19 Action of waste Sect. 6. 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.
- 20 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 dower 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.
- 21 Husband If one tenant in common, joint tenant or co-parcener commit waste of the estate held in common, joint tenancy or co-parcenary;
- 22 between joint tenants, &c.

he shall be liable to an action of waste at the suit of his companion.

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.

23 by heir &c.

24 not to abate by the death of party

In an action of waste the plaintiff shall recover the place wasted and double the damages.

25 Judgment

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.

26 Accidental fire

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.

27 Limitation

28 Saving

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.

29 estrepment

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.

30 Writ of waste, how served

31 Judgment by default

*Passed at Dover, February 11, 1829.*

## II.

AN ACT respecting devises of lands, joint estates and dower.\* 1816

Section 1. No estate in joint tenancy, in lands, tenements or hereditaments, shall be held or claimed by or under any grant, devise or conveyance whatsoever hereafter to be made to any persons, other than to executors or trustees, unless the premises therein mentioned shall be expressly granted, devised or conveyed to such persons to be held as joint tenants and not as tenants in common, any law, usage or custom to the contrary notwithstanding.

31 No Joint-tenancy unless expressly (54)

32 except

Sect. 2. The widow of any man, who shall die after the passing of this Act, and who during their marriage was seized of an estate of inheritance in any lands or tenements within this State, shall have the third part of all the lands and tenements, whereof her said

33 The right of dower

\*This Act was passed Feb. 16, 1816, on which day the House of Representatives recorded from the amendments by them proposed—See Journal of the House of Rep. of Session commencing Jan. 1816, pa. 221-2.

- Dower husband was seized as aforesaid at any time during the marriage, to hold to her as tenant in dower for and during the term of her natural life, free and discharged from all and every the alienations, covenants, debts, liens and incumbrances made, entered into, contracted or created by the said husband after the intermarriage, unless she shall have relinquished her right of dower therein by her own voluntary act according to the existing laws of this State :
- 31 Not to af- *Provided always* that nothing herein contained shall be construed  
fect any lease or taken to affect or destroy any lien or incumbrance existing be-  
existing be- fore the passing of this Act:† and in all cases, where a widow may  
fore this Act be entitled to dower, the same may be assigned and laid off to her  
35 Saving by the Orphans Court of the county, where the land lies, upon her  
petition to the said court, by the like proceedings and in the same  
36 Proceed- manner, as is by law provided in the case of intestate estates, and the  
for dower cost and charges thereof shall be ordered by the court to be paid (a)  
b (12) by the parties respectively concerned, [according to their interests in  
37 Costs the said lands, whereof dower shall be so assigned or laid off.]  
a (12)
- 38 Barred by Sect. 3. If any testator after the passing of this Act shall de-  
devise vise to his wife any portion of his real estate, such devise shall be  
deemed and taken to be in lieu and bar of her dower out of the  
estate of her deceased husband in like manner, as if the same were  
so expressed, unless such testator shall by his last will and tes-  
tament declare otherwise. any law, usage or custom to the contrary  
notwithstanding : *Provided*, that nothing in this section contained  
39 Election shall deprive the widow of her choice, either to dower or the  
estate so devised, which choice shall be made by the widow before  
the Orphans Court of the county, where the testator's will is recor-  
ded, upon her voluntary appearance in the said court, or upon a  
40 how made citation to be issued from the said court directed to the widow upon  
the request of any devisee or other person interested in the testator's  
estate, requiring her to appear at a certain day before said court  
and make her election ; and if she shall appear and make her elec-  
tion, the same shall be recorded in the court, and shall entitle her  
to claim accordingly ; but if after having thirty days notice by  
such citation, she shall fail to appear and make her election, the  
same shall be entered on record in said court ; and in such case the  
devise to her in the will of her deceased husband shall be and stand  
in lieu and bar of her dower in the real estate of the testator.

## III.

## 1816 AN ACT respecting the partition of lands and tenements among joint tenants and tenants in common.

- 41 Joint ten- Section. 1. When two or more persons now hold or hereafter  
ants & tenants shall hold as joint tenants or tenants in common any lands or tene-  
in common ments within this State, any one or more of them being of lawful  
age or the guardian or guardians of any being under age may pre-  
42 May peti- fer a petition to the Chancellor of this State, in vacation or in  
tion Chancel-

†In the case of *Brinckloe vs. Brinckloe*, in the Orphans Court, Kent, Summer T. 1821, it was determined, that debts contracted prior to the passing of this Act had preference under this proviso, to the widow's demand of dower. This was affirmed in the Supreme Court on appeal.

term time, stating the facts, describing the lands and tenements so held, and praying partition thereof among the several persons entitled to the same according to their several and respective rights: and thereupon the Chancellor shall order a summons to be issued by the Register of the Court of Chancery of the county where the premises lie, directed to the other person or persons concerned who may not have joined in such petition, returnable on some day in the next term of said court, requiring the said person or persons to appear before the Chancellor and shew cause, if any they have, why partition of the premises should not be made according to the prayer of the petition; and upon the return of such summons, if the parties summoned shall fail to appear, or appearing shall not shew to the satisfaction of the Chancellor sufficient cause against making partition of the premises, the Chancellor shall enter upon the record of the court a decree that partition be made of the premises among the parties interested, stating the share or portion to be allotted to them (a) respectively, and shall thereupon issue a commission directed to five freeholders to be appointed commissioners by the Chancellor, authorizing and requiring them, being first duly sworn or affirmed before some Judge or Justice of the Peace faithfully and impartially to perform the duty required of them by such commission and make a just and fair partition among the parties according to the best of their skill and judgment, to go upon the premises and make a just and fair partition thereof between or amongst the parties, in the proportions in the said commission mentioned, and to make return of such partition with a survey of the premises, (where lands are divided) to be made by some skilful surveyor appointed by the commissioners and to be first duly qualified as aforesaid: which said commissioners shall make return of said commission with the partition by them made, certified under their hands and seals, to the Chancellor according to the command of the said writ; and if such partition be approved by the Chancellor, he shall thereupon enter a final decree, that the said partition shall remain firm and stable forever; and such proceedings and decree shall be good and effectual in law, and binding and conclusive among the parties, and all claiming by, through or under them or any of them.

Sect. 6. If all the said joint tenants or tenants in common being of lawful age or the guardians of those being under lawful age shall all unite in preferring a petition to the Chancellor for partition as aforesaid; then and in such case the Chancellor shall, upon receiving such petition and without issuing any summons, enter a decree that partition be made, designating the share or part, to which each of them is entitled, and order a commission for making partition among the parties, in the same manner, as is herein before mentioned; which commission shall be proceeded in, executed and returned, and final decree be entered thereon in the same manner, as is herein before directed, and shall be good and effectual in law and binding and conclusive upon the parties thereto and all others claiming by, through or under them or any of them: and a copy of any proceedings and partition made pursuant to this Act, certified under the hand of the Register and seal of such court, shall be admitted and received as competent evidence, touching such partition in any court of law or equity; and the costs of every partition

for for parti-  
ti a

43 Summons

44 decree

a [11]

45 Commis-  
sion

46 Oath of  
Commission-  
ers

47 Surveyor

48 return

49 final decree

50 all the te-  
nants joining  
in the petition

decree there-  
on

51 Copy evi-  
dence

52 Costs

- a [10-11] made under this Act shall be taxed and allowed by the Chancellor, and be paid by each party according to his or her interest in the premises, in such manner as the Chancellor shall order. (a)

*Passed at Dover, February 12, 1816.*

#### IV.

- 1721 AN ACT for the better confirmation of the owners of lands and inhabitants of this government in their just rights and possessions.

- 53 Liability of lands for debts  
54 and to be distributed among children  
55 Proviso  
Sale on execution to several tenancy in common  
a [31]
- Whereas divers laws have been enacted in this government, that made all lands and tenements (without any regard to the fee simple, or other tenures by which they are held) as liable to pay debts as chattels, and be taken and sold upon executions, or by decrees in courts of equity, or to be sold by such executors as had no power by their testator's wills for so doing, and in certain cases to be sold by administrators, as also to be divided, allotted and distributed amongst the children of intestates; in pursuance of which laws, divers lands, tenements and hereditaments in this government have been sold, delivered, assessed, allotted or distributed accordingly.
- Section 1. [By the part of this section preceding the proviso such sales, allotments and distributions made before the first day of December in the year one thousand seven hundred and twenty one are confirmed.] Provided always, That all and every the children of intestates, to or amongst whom any lands, tenements and hereditaments have been allotted or distributed by virtue of the said laws, and all and every person and persons, to whom any parts or purparts of lands, tenements or hereditaments have as aforesaid been, or hereafter shall be, sold or delivered upon executions, shall hold and enjoy their said respective parts, purparts or allotments in severally or as tenants in common, and not as joint tenants. (a)

#### EJECTMENT.

1829

#### AN ACT concerning the action of ejectment.

- Action of Ejectment—extent of
- 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.

- Actions for mesne profits, not barred by the Act of limitation, in certain cases
- 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 barred by the Act of limitation from recovering mesne profits for three years next preceding the commencement of the ejectment.

*Passed at Dover, February 6, 1829.*

# ELECTION OF ASSESSOR & INSPECTOR.

171

## AN ACT directing the election of Assessors and Inspectors.

1826

Section 1. An election shall be held every year on the fifteenth day of September, except when that day shall be the Sabbath, and then on the next day following, in each hundred of this State at the place appointed by law for holding the General Election for the purpose of electing an assessor and inspector of such hundred : in such election every citizen residing in such hundred and qualified to vote in elections of Governor, Senators and Representatives, and no other shall be entitled to vote ; and no person shall be capable of being elected assessor or inspector of a hundred, unless he shall at the time of the election be a freeholder within such hundred and an inhabitant thereof ; the election shall be opened between the hours of eleven of the clock in the forenoon and twelve of the clock, noon, and shall continue open till six of the clock in the afternoon, when the election shall be closed ; the election shall be by ballot ; and the persons having the highest number of votes for said offices respectively shall be chosen ; but if two or more persons shall have an equal and at the same time the highest number of votes for either of said offices, the presiding officer shall give an additional casting vote.

1 Time and place of election (12)

2 Who may vote

3 Who may be elected

4 hours of opening and closing

5 casting vote

Sect. 2. The collector of each hundred shall be the presiding officer at the election of assessor and inspector of his hundred ; but if at the time there happen to be no collector or if the collector shall be absent from the place of election at eleven of the clock in the forenoon of the day of holding it, the electors there shall proceed forthwith, without ballot, to choose from the freeholders of the hundred present a presiding officer for the election in place of the collector ; and in choosing this presiding officer the Justice or Justices of the Peace residing in the hundred who may be present, or if no such Justice shall be present, then the constables or constable of the hundred, who may be present, and if no such constable be present, then two freeholders to be nominated and appointed by the electors shall be the judges or judge ; and before opening the election, the collector or the presiding officer so chosen shall take to his assistance two freeholders of the hundred there present ; and the collector or the presiding officer so chosen and said freeholders, shall be judges of the election and before opening the same shall take an oath or affirmation as follows—I

6 Collector presiding officer

7 if he be absent

8 Judges

9 Oath

*do solemnly swear (or affirm) that in judging concerning the election here to be held, I will determine every matter, truly, faithfully and impartially according to the best of my skill and judgment. So help me God (or so I do solemnly affirm ;)* which oath or affirmation the collector or other presiding officer shall administer to the freeholders and one of them to him : and when the election shall be closed, the collector or other presiding officer and freeholders shall read and count the votes given and ascertain the number given to each candidate voted for as assessor or as inspector, and shall make and sign four certificates of the election, and shall cause the same to be transmitted without delay, to wit ; one to the assessor elected, one to the inspector elected, one to the clerk of the peace of the county to be laid before the Levy Court and Court of Appeal, and one to the Sheriff of the county : and said certificates shall be according to the following form ; viz ;

10 Certificates of election

## ELECTION OF ASSESSOR &amp; INSPECTOR.

- their form      county ss. *At an election held in*      hun-  
*dred, on the*      *day of September in the year of our Lord*  
*one thousand eight hundred and*      *for the purpose of electing*  
*an assessor and inspector of said hundred,*      *was duly elect-*  
*ed assessor, and*      *was duly elected inspector. In testimony*  
*whereof we, the judges of said election, who were in due manner*  
*sworn or affirmed before opening said election, have hereunto set our*  
*hands, the day and year aforesaid:—which certificate shall be con-*  
*clusive, and the election shall not be liable to be contested; but if*  
*any person, who shall be so certified to be elected, shall not have*  
*been capable of being elected to the office, then the office shall be*  
*deemed vacant; and an assessor or inspector shall be appointed in*  
*the same manner, as if the person elected had died after the election.*
- 11 if person  
elected—not  
capable      Sect. 3. If it shall be impracticable to hold an election at any  
place, as directed by this Act, the collector or other presiding of-  
ficer to be chosen as aforesaid may appoint some other place as  
near, as can be conveniently obtained to the place herein directed.
- 12 place of  
election in  
certain case      Sect. 4. If there shall be an omission in any hundred to elect an  
assessor in any year, the Levy Court and Court of Appeal of the  
county shall appoint the assessor of such hundred; and the said  
court shall have power to appoint an assessor to fill any vacancy,  
that shall happen in the office of assessor of any hundred by the  
death of the assessor or by his removal from the hundred or his re-  
fusal to appear and take the oath or affirmation, as required by  
law, or his refusal or neglect to perform the duties of his office or  
otherwise; and if a vacancy shall happen in the office of assessor  
after the duties shall be in part performed, the assessor appointed  
to fill such vacancy shall return the rates and valuations made by  
his predecessor, if he can obtain the same; and the same shall be  
accepted and deemed as regularly returned, and in that case there  
shall be allowance made to the first assessor according to the  
discretion of the court: and an assessor appointed by said court  
shall take the same oath or affirmation and be vested with the same  
powers and liable to the same duties as an assessor elected as  
aforesaid; but no person shall be appointed an assessor of a hun-  
dred but a freeholder and inhabitant of such hundred.
- 13 Levy Ct.  
can appoint  
an Assessor in  
case of failure  
to elect, or  
vacancy      Sect. 5. If any collector shall refuse or neglect to serve as pre-  
siding officer at the election of assessor and inspector of his hun-  
dred or to perform the duties of such officer; every collector, for  
every such refusal or neglect, shall upon being indicted and con-  
victed thereof in the court of General Quarter Sessions of the  
Peace and Gaol Delivery within the county be fined at the discre-  
tion of the court a sum not less than twenty dollars nor more than  
fifty dollars and be adjudged to pay the costs of prosecution: and  
if any person, who shall be elected an assessor or who shall be ap-  
pointed an assessor, of a hundred pursuant to this Act, shall neg-  
lect or refuse to serve as such assessor or shall fail, neglect or  
refuse to do, observe and perform all the acts and duties re-  
quired of or enjoined upon him as such assessor by law, every  
such person shall upon being indicted and convicted in the said  
Court of General Quarter Sessions of the Peace and Gaol Delive-  
ry within the county of any such failure, neglect or refusal be fined  
at the discretion of the court in a sum not less than twenty dollars
- (Levy Court)
- 14 Who may  
be appointed
- 15 Collector  
neglecting his  
duty—penalty
- 16 Assessor  
refusing to  
serve, or neg-  
ligent—penal-  
ty

nor more than one hundred dollars and shall pay the costs of prosecution.

Sect. 7. If at any election held for the purpose of electing an assessor and inspector in pursuance of this Act, any collector or presiding officer or freeholder taken by such collector or presiding officer to his assistance shall knowingly and wilfully take and receive or advise and consent to the taking and receiving of the vote of any person not entitled to vote at such election, or shall knowingly and wilfully reject or advise and concur in rejecting the vote of any person entitled to vote at such election, or shall use any fraud, falsehood or deceit in doing or performing any the duties, matters or things by this Act required of him, or shall refuse or wilfully neglect to perform any the said duties, matters or things; every such collector, presiding officer or freeholder shall, for every such offence, forfeit and pay to the State a fine of two hundred dollars: and if any person not entitled to vote at any such election shall vote at any such election, or if any person shall vote or offer to vote more than once at any such election, or if any person shall influence or attempt to influence any man in giving his vote by any reward, gift or benefit or promise of favor or advantage; every such person, for every such offence, shall pay to the State a fine of fifty dollars; and for any offence against this Act the proceeding shall be by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery within the county, where the offence shall be committed, and the offender besides the fine shall pay the costs of prosecution: *Provided*, that nothing in this section shall extend to the case of a collector refusing or neglecting to serve as presiding officer at an election of assessor and inspector which is herein before provided for.

17 Receiving illegal votes—voting illegally—misbehaviour of officers—penalty

*Passed, January 25th, 1826.*

# I.

## GENERAL ELECTIONS.

1826

### AN ACT regulating the General Election.

Section 1. The General Election in and for the several counties of this State on the first Tuesday of October, shall be held in the respective hundreds of the said counties at the places respectively hereinafter appointed for that purpose, that is to say; in *New-Castle county*; in Brandywine hundred at the house known by the name of the Green Tree tavern now occupied by Joel I. Baily and situated in the village of Brandywine; in Christiana hundred at the Town Hall in the Borough of Wilmington; in Mill Creek

1 Gen'l Election Places  
a  
2 Newcastle county

† February 10 1826

a These are the present places of holding the General Election. The places originally appointed by this Act were in three Hundreds, (viz. Brandywine & St. George's, in Newcastle county, and Little Creek in Kent county,) different. In respect to each, there is inserted in the margin, under a note of reference, the date of the Act appointing the present place.



- hundred at the Mermaid tavern now occupied by John Dixon ; in White Clay Creek hundred at the house in the village of Newark now occupied as a tavern by John Herdman ; in Pencader hundred at the house in Glasgow now occupied as a tavern by Ephraim Knowles ; in New-Castle hundred at the Court House in the town of New-Castle ; in Red Lion hundred at the house in the village of St. Georges now occupied as a tavern by John Ball ; in St. Georges hundred at the house in the village of Cantwells Bridge
- † February 7, 1827  
3 Kent  
now occupied as a tavern by William Williams ; and in Appoquinimink hundred at the house at Black Bird now occupied as a tavern by William Williams : in *Kent county* ; in Duck creek hundred at the house in Smyrna now occupied as a tavern by Comfort Lockwood ; in Little Creek hundred at the house § of John Wright, Esq. in the Village of Leipsic ; in Dover Hundred at the Court House in Dover ; in Murderkill hundred at the house in Canterbury now occupied as a tavern by Levi Walcott ; and in Mispillion hundred at the house formerly "Dallinar's" now occupied as a tavern by Adam Marvel : in *Sussex county* ; in Cedar Creek hundred at the house at the head of Cedar creek now occupied as a tavern by Ansley White ; in Broadkill hundred at the house in Milton now occupied by Henry Benson ; in Nanticoke hundred at Bethel or Passwater's cross roads at the house now occupied by Priscilla Coverdale ; in Northwest Fork hundred at the house in Bridgeville now occupied as a tavern by John Wilson ; in Broad Creek hundred at the house now occupied by John Anderson ; in Little Creek hundred at the house in Laurel now occupied as a tavern by Nancy Martin ; in Dagsborough hundred at the house now occupied as a tavern by James Robinson ; in Baltimore hundred at the house now occupied as a tavern by Mitchell Showell ; in Indian River hundred at the house near St. Georges now occupied as a tavern by John W. Dean ; and in Lewes and Rehoboth hundred at the house in Lewestown now occupied as a
- § February 14 1829  
4 Sussex
- 5 Power, in case of necessity, to appoint different places  
time be impracticable to hold the election in any hundred at the place appointed, the inspector of such hundred shall have power to appoint some other place in said hundred as near as can be conveniently obtained to the place herein directed ; and he shall give public notice of the place so appointed by advertisements posted in at least five of the most public places of the hundred, if circumstances will admit of such notice being given ; but if not, then he shall give such public and general notice as the circumstances will permit.
- 6 Electors must vote in their Hundreds  
Sect. 2. The electors shall give their votes in the particular hundreds, in which they shall respectively reside at the time of the election and not elsewhere.
- 7 Duty of Sheriff in delivering lists, boxes, forms  
Sect. 3. The sheriff of each county shall, after the sixteenth and on or before the twentieth day of September in every year, deliver to the inspector of each hundred of his county, a list of all the officers to be chosen at the then next General Election, an alphabetical list of the names of all the white free male citizens of the age of twenty-one years and upwards residing and assessed in such hundred, two suitable ballot boxes with a piece of tape and sealing wax, written or printed forms—of tally lists, of certificates of election in such hundred, of the oath or affirmation of
- [17] [37]

the inspector and the freeholders to be taken as judges of the election and of the certificate of administering such oath or affirmation with written or printed directions as to correcting, completing and signing such oath or affirmation and certificate of administering the same : the said alphabetical list shall be made and certified by the Clerk of the Peace of the county under his hand and seal of office ; and as to every person, whose name shall be contained in such list and who shall appear by any certificate recorded in the office of said clerk to be naturalized, the word " naturalized " shall be distinctly affixed to the name of every such person : and such alphabetical list shall be delivered by the Clerk of the Peace to the sheriff on some day in the month of August in every year : the tally list shall consist of a margin on the left for the names of the persons voted for and squares formed by parallel lines drawn from left to right and from the bottom to the top of the sheet, each square to be sufficient to contain five distinct rows of five distinct dots of a pen in each row, and there shall be a sufficient number of squares in each row of squares from left to right to contain more dots than any person will probably receive votes in the hundred : and the ballot boxes to be each of sufficient size to contain all the ballots of the hundred with the tally list and certificate of election ; in the lid of one of the boxes there shall be a hole sufficient only to admit with convenience one ballot ; and it shall be furnished with a lock and key for securing the lid ; the lid of the other box shall be without a hole and it shall be so formed as to be secured with tape and sealing wax. The inspector of each hundred shall, within two days after receiving the aforesaid list of officers, give public notice of the time and place of holding the then next General Election in his hundred and of the officers to be voted for at such election, by advertisements posted in at least five of the most public places of his hundred.

Sec. 4. The General Election shall be opened in every hundred on the first Tuesday of October, between the hours of nine and ten o'clock in the forenoon and shall be continued open until five o'clock in the afternoon ; when it shall be closed ; and if there shall be no inspector of any hundred or if he shall be absent from the place of election at nine o'clock in the forenoon of the day of the election, the electors there shall proceed forthwith without ballot to choose from the freeholders qualified voters of the hundred there present an inspector of the hundred ; and in choosing such inspector the Justices or Justice of the Peace residing in the hundred who may be present, and if no such Justice of the Peace shall be present, the constables or constable of the hundred who may be present, and if no such constable shall be present, then two freeholders qualified voters of the hundred to be nominated and appointed by the electors, shall be the judge or judges.

Sect. 5. The inspector of the hundred shall be the presiding officer at the General Election in his hundred, and before opening the election shall take to his assistance two freeholders qualified voters of his hundred there present, who are required to serve ; and if any freeholder so taken shall refuse to serve he shall forfeit and pay to the State for such offence fifty dollars : and the inspector and freeholders so taken shall be judges of the election in their

8 duty of Clerk of Peace making & delivering lists

9 tally list

10 ballot boxes

11 Inspector to give notice

12 Time of opening election [88]

13 if no Inspector pres't.

14 Judges at election appointed and qualified before opening [50] penalty

15 Penalty on refusal to serve [93]

16 Oath [1<sup>o</sup>, 19.]

17 Form of oath & certificate [20]

18 Manner of administering & signing by Inspector and Judges (21)

19 Certificate [21—37]

20 Blanks 11

hundred and shall each take and sign an oath or affirmation according to the form herein after set forth such form being corrected according to the directions herein after contained in this behalf before administering and signing the same : and if any such inspector or freeholder shall refuse or neglect to take or sign such oath or affirmation, he shall forfeit and pay to the State a fine of fifty dollars : and the form of said oath or affirmation shall be as follows, viz. ; *I*

*do solemnly swear (or affirm,) that in the election to be this day held I will not knowingly or wilfully receive or consent to the receiving of the vote of any alien and also that I will not receive or consent to the receiving of the vote of any person, whom I shall believe not entitled to vote, unless my associates shall adjudge such person to be entitled to vote, that I will not receive or reject nor concur in receiving or rejecting any vote through partiality or undue bias ; and that I will determine every matter, that shall come before me, and perform every act and duty by law required of me, touching the said election, truly, faithfully and impartially according to the best of my skill and judgment : that I will cause the ballots that shall be taken at this election to be fairly read and ascertained, and a true statement thereof to be made according to the best of my knowledge and ability, and that if I shall discover any partiality, unfairness or corruption in the conducting of the said election, I will disclose the same to the Attorney General to the end, that the subject may be investigated ; so help me God (or so I do solemnly affirm :) which oath or affirmation shall before opening the election be administered to the freeholders by the inspector and by one of them to him. And to the end that such oath or affirmation may be duly certified, the sheriff of the county shall deliver to the inspector of each hundred three distinct forms of said oath or affirmation written or printed on one sheet ; which forms shall be numbered and distinguished by No. 1 No. 2 and No. 3 ; the form No. 1 shall be signed by the inspector, his name being first inserted in the blank ; the form No. 2 shall be signed by one of the freeholders, his name being first inserted in the blank ; and the form No. 3 shall be signed by the other freeholder, his name being first inserted in the blank ; but before signing it shall be ascertained whether the inspector or either of the freeholders conscientiously refuse to take an oath ; and in case of such conscientious refusal the form for the person so refusing shall be made correct by effacing the words "swear or" in the beginning and "so help me God" in the end of the form ; but as to the person who shall not conscientiously refuse to take an oath the form shall be made correct by effacing the words "or affirm" in the beginning and the words "or so I solemnly affirm" at the end of the form ; and upon the same sheet and after the said form shall be written or printed a form for a certificate as follows, to wit,*

*county and hundred ss. We the subscribers, judges for said hundred of the General Election therein held on the first Tuesday of October in the year of our Lord one thousand eight hundred and , certify, that on said day before opening the said election in said hundred, the foregoing oath or affirmation, was duly administered to each of us according to law ; the blanks in which said certificate shall be filled by the sher-*

iff or by his order before delivering the same to the inspector ; and the inspector and freeholders, judges of the election, shall sign said certificate before opening the election : and also the said inspector and freeholders or a majority of them shall before opening the election, appoint two clerks of the election ; and the inspector or one of the freeholders shall administer to each clerk an oath or affirmation as follows : *You do solemnly swear (or affirm) that, as clerk of this election, you will not use or assent to any falsehood, fraud or deceit, and that you will keep the polls, and perform all your duties truly, faithfully and impartially, so help you God (or so you solemnly affirm)* and if, in reading the votes, and keeping the tally lists, it shall be necessary to appoint one or more additional clerks ; the inspector and freeholders or a majority of them may do so : administering to each clerk to be appointed the foregoing oath or affirmation. And the election shall be opened by the inspector making proclamation that the same is open ; and also the inspector shall one half hour before closing the election make proclamation that the same will be closed in that time.

led before do-  
livery  
21 signed be-  
fore opening

22 Clerks  
(38)

Sect. 6. Before opening the election the inspector and the freeholders, judges of the election, shall examine the ballot box provided with a lock and key and see that the same contains nothing ; the box shall then be locked, and the key delivered to one of the freeholders, who shall keep the same ; and the box shall be kept by the inspector or the other freeholder, so that the person, having the key shall not have possession of the box ; till the same shall be opened, as herein after directed. Each qualified elector shall deliver a single ballot, containing the names of the officers voted for to the inspector, who shall audibly pronounce the name of the elector, which shall be entered in words at length upon a list of polls to be kept by each of the clerks whom the judges shall direct to that duty, and one of the freeholders shall write against it on the alphabetical list, delivered to the inspector by the sheriff as aforesaid, the word "*voted ;*" there shall be no examination of a ballot except to determine that it is single ; and the inspector shall immediately after pronouncing the elector's name, put the ballot into the box in his presence, unless the vote shall be objected to, in which case the matter shall be determined according to the opinion of a majority of the judges ; but either of the judges may require the inspector to administer to a person, claiming to vote on the ground of his father's qualification, the following oath or affirmation, *You do solemnly swear (or affirm) that you are of the age of twenty-one years and not arrived to the age of twenty-two years ; and to any person offering to vote, on the ground of his own qualification, the following oath or affirmation, You do solemnly swear (or affirm) that you are of the age of twenty-one years and that you at this time reside in this hundred and that you have not voted and will not vote on this day in any other hundred, and that you have resided in this State two years next before this election, and that you have within that time paid a State or county tax which was assessed at least six months before this election ; and any person refusing to take such oath or affirmation, if so required, shall not be permitted to vote ; but no person shall be required or permitted to take either of the said oaths or affirma-*

23 Preparing  
ballot box

24 Voting--  
manner--duty  
of inspector,  
&c.

25 Oath re-  
quired  
(28)

26 for voter  
between 21 &

22  
27 gen'l oath

28 when not  
required

- 29 false oath  
30 Reading out  
31 tallying  
32 When part of ticket rejected  
33 No adjournment  
34 Certificates (36)  
35 disposal of tally list, certificates, and ballot boxes (12—51)
- tions, if the judges or a majority of them shall, from their own knowledge or the circumstances appearing, consider that such person is not entitled to vote : and if any person shall, in taking either of said oaths or affirmations, swear or affirm falsely : he shall suffer the same punishment as shall at the time be provided by law against wilful and corrupt perjury.
- Sect. 7. When the election shall be closed, the inspector and freeholders, judges thereof, shall openly and publicly unlock the box containing the ballots, and shall remove the lid so far as that the ballots can be taken separately from the box, and one of the judges shall keep in his custody the said box, while another shall publicly in the presence of the other judges and such of the electors, as shall think proper to be present, take the ballots one by one from the box and read the same : and when a ballot shall be read, it shall be put in the other box delivered by the sheriff to the inspector as aforesaid ; it being first seen, that said box contains nothing ; and the same being kept during the reading in the possession of one of the judges : and two clerks at least shall keep accurate count of the ballots as the same shall be read ; which shall be done upon such tally list as aforesaid, by writing the name of every person voted for in the margin under a designation of the office, for which the vote is given to him, and making a distinct dot with a pen in the squares in the row against such name for every vote, such person shall receive for the same office ; and each square, when full, shall contain five rows of dots, each row consisting of five dots ; and each clerk shall, upon the reading of the name, repeat it with the number of the dot in the row ; pronouncing at the last dot in the square "*tally full*," and at the first dot of the succeeding square "*one of a new* : " and if the same person shall be voted for, for different offices, his name shall be written in the margin for each office, and a just count kept of the votes given to him for each office :—but if, on reading the ballots, it shall be found that the part of any ballot for representatives in the General Assembly shall contain the names of more or less than seven persons : or the part for sheriffs or the part for coroners shall contain the names of more or less than two persons ; or the part for Levy Court Commissioners shall contain the names of more or fewer persons, than ought to be voted for ; such part of the ticket shall be rejected ; and the residue shall be read : and the reading and counting the votes shall be continued without interruption or adjournment until completed ; and then the inspector and freeholders, judges as aforesaid, shall make two certificates of the election in their hundred under their hands, stating every office, for persons to fill which votes shall have been given at said election, the name of every person to whom any vote shall have been given for such office, and the number, in words at length, of votes given to such person for the said office : and the tally lists shall be signed by the judges and clerks and deposited with one of said certificates in the box, in which the ballots shall have been put when read ; and the lid of said box shall be secured by tape crossed and sealed in sealing-wax by one of the freeholders : the other certificate and the ballot boxes shall be kept by the inspector and produced at the Court House as herein after required :

# GENERAL ELECTION.

17

such certificates may be according to the following form, viz:  
*county and hundred ss. At the General Elec-*  
*tion held in said hundred on the first Tuesday of October, A. D.*  
*one thousand eight hundred and the votes stand as*  
*follows :*

36 Form of  
certificate

*For the office of Governor.*

*received votes*  
*received votes*

*For the office of Representatives in Congress.*

*received votes*  
*received votes*

*For the office of Senator in the General Assembly*

*received votes*  
*received votes*

*For the office of Senator in the General Assembly in lieu of*

*received votes*  
*received votes*

*For the office of Representatives in the General Assembly*

*received votes*  
*received votes*

and so on.

*For the office of Levy Court Commissioners*

*received votes for hundred*  
*received votes for hundred*

and so on.

*For the office of Sheriff's*

*received votes*  
*received votes*

*For the office of Coroner*

*received votes*  
*received votes*

[omitting the offices not to be filled at the election, and stating under each office the name of every person voted for, for such office with the number of votes which he received.] *And we further certify that the clerks appointed by us were duly sworn or affirmed according to law and we were duly sworn or affirmed : In testimony whereof we the judges of said election for said hundred have hereunto set our hands the day and year aforesaid.* And in the written or printed forms of certificates to be delivered by the sheriff to each inspector, the name of the county and hundred and the date of the year shall be inserted, before the same shall be delivered, in the blanks for said purposes in the foregoing form ; and the offices to be filled at the election shall be inserted with blanks under each to contain the names of the persons, who may be voted for, with the number of votes ; and the offices not to be filled at the election shall be omitted ; and no other certificate need be made of the oath or affirmation administered to the clerks than that contained in the foregoing form.

37 blanks filled before forms delivered

38 Clk's oath certified

Sec. 8. Each inspector shall, on the Thursday next succeeding the day of the General Election, deliver into the office of Clerk of the Peace of his county the oaths or affirmations that shall have been signed by the inspector and freeholders, judges of the election, in his hundred, and the certificate of said oaths or af-

39 Inspector to deliver to Clk of Peace certain papers

firmations being administered, to be made and signed as before directed, and the two lists of the polls kept at the election as before directed, and the alphabetical list aforementioned with the notes of "voted" as the same shall have been made thereon; all which shall be filed in the office of the said clerk and shall be public records and as such admissible as evidence.

40 Meeting  
of Inspectors

41 Board of  
canvass

42 duty of  
Inspectors

43 of Ex'ors  
or Adminis'trs  
of Inspector

44 power of  
presiding offi-  
cer of board

Sect. 9. The inspectors of the several hundreds in each county shall meet on the Thursday next succeeding the day of the General Election at twelve of the clock noon. at the Court House of their county; and the sheriff of the county shall attend at the same time and place; and the said sheriff and inspectors shall be a board of canvass, of which the sheriff shall be the presiding officer; but if the sheriff shall be dead or shall not attend, then the coroner of the county shall be a member and the presiding officer of the said board in his place; but if the coroner shall not be in attendance, the prothonotary of the Court of Common Pleas in the county shall be a member and presiding officer of said board; but if he shall not be in attendance, then the inspectors, who may be present, shall appoint one of said inspectors to be the presiding officer of said board; and the said board may appoint clerks, as they may deem proper; and the said board shall publicly in the presence of such electors of the county, as shall think proper to be present, ascertain the state of the election throughout the county by calculating the aggregate amount of all the votes for each office, that shall have been given in all the hundreds of the county for every person voted for, for such office; and for this purpose each inspector shall at the said time and place last mentioned produce and deliver to the sheriff or other presiding officer of the board the certificate of election for his hundred so signed as aforesaid: at the same time each inspector shall produce and deliver to the sheriff or other presiding officer of the board the ballot boxes, the one being secured as aforesaid; and if the certificate of election for any hundred cannot be produced, the ballot box for that hundred may be opened and the certificate therein contained taken and used and again deposited in said box, which shall be secured as before; and if any inspector, after the election and before the meeting of the inspectors, shall die or be prevented from attending the meeting by sickness or accident, the certificate of election for his hundred and the ballot boxes shall be sent by safe and secure conveyance (for the safety of which the inspector or his executors or administrators or heirs shall be responsible) on the said Thursday next succeeding the day of the General Election to the Court House of the county and there be delivered to the sheriff of the county or other presiding officer of the board of canvass by twelve of the clock noon, and at the same time the other papers, returnable to the clerk of the peace shall be transmitted to him and if any inspector shall neglect or refuse to attend the meeting of inspectors hereby required, not being absolutely prevented as aforesaid; or if the certificate of election or the ballot boxes for any hundred shall not be produced or sent and delivered to the sheriff or presiding officer of the board of canvass as before required; the sheriff or other presiding officer of the board of canvass shall have power and he is authorized to issue his warrant

under his hand to any person or persons whom he may appoint, commanding such person or persons without any delay to arrest and bring to the meeting of inspectors such inspector so neglecting or refusing to attend, and to obtain and produce to the board of canvass the certificate of election and ballot boxes, which such inspector ought to have produced and delivered to the sheriff or presiding officer of said board or if a command for an arrest shall in any case be improper, then such warrant may command the person or persons, to whom it shall be directed, without delay to obtain and produce to the board of canvass the certificate of election and ballot boxes for any hundred, that shall not have been produced or sent and delivered, as herein required; and the person or persons, to whom such warrant shall be directed, are required and strictly enjoined to execute the same and to call and command any assistance which may be requisite; and after the state of the election shall have been ascertained by calculating the votes as aforesaid, it shall be the duty of the sheriff, or other presiding officer of the board of canvass and the inspectors present at said board before adjournment or separating of said board to make under their hands the following certificates; to wit; four certificates of the election for Governor, certifying in words at length the number of votes given for every person voted for, for that office, two certificates of the election of a representative or representatives, as the case may be, of this State in the House of Representatives of the United States in Congress, certifying in words at length the number of votes given for every person voted for, for that office, two certificates of the election of senator or senators and two certificates of the election of representatives for the county, in the General Assembly of the State, two certificates of the election of sheriffs, and two certificates of the election of coroners, certifying the persons chosen and the number of votes given to each, and one certificate of the election of Levy Court Commissioners, or of such of said officers as shall have been voted for at the said election: and it shall be the duty of the sheriff, coroner or other officer presiding at the board of canvass, to inclose and seal up each of said certificates separately in a paper with an indorsement thereon describing the certificate inclosed; and in case of the certificates of senator or representatives in the General Assembly, the names of the persons chosen shall be indorsed upon the paper inclosing the certificate: and it shall further be the duty of the sheriff, coroner, or other officer presiding at the board of canvass, either personally or by a person by him to be deputed for that purpose, to deliver and lodge the said certificates of the election for Governor according to the directions of the constitution in this behalf, and to lodge one of said certificates of the election of senator or senators and one of the said certificates of the election of representatives for the county in the General Assembly of the State in the office of the prothonotary of the Court of Common Pleas in and for Kent county, and to deliver one of said certificates of the election of representative or representatives in the House of Representatives of the United States and one of said certificates of the election of sheriffs and one of said certificates of the election of coroners to the Governor, and to lodge the other of

45 Certificates of election in the county (17)

46 Returns of election

(Constitution 45)



## GENERAL ELECTION.

the said certificates and the said certificate of the election of Levy Court Commissioners in the office of the clerk of the peace of the county; all within five days next ensuing the day of calculating the votes and ascertaining the state of the election as aforesaid; and further on the first day of the meeting of the General Assembly after the election the other certificate of the election of senator or senators to the Senate, and the other certificate of the election of representatives for the county, to the House of Representatives; and the prothonotary for Kent county shall on any day of meeting of the General Assembly deliver, if required, the certificate of election of senator or of representatives to the order of the House, to which it belongs, or to any person named in the indorsement thereon: the aforesaid certificates may be according to the following form, viz.

47 Form of  
Certificates  
(48)

*The State of Delaware* county, ss, *Be it remembered,*  
*that at the General Election held on the first Tuesday of October in*  
*the year of our Lord one thousand eight hundred and* for  
county, according to the Constitution and laws of the  
*State of Delaware,* [here insert, to wit, if the certificate be of an  
election of Governor or of representative to Congress, the num-  
ber in words at length of votes given for each person voted for, for  
said respective offices, if the certificate be of an election of senator  
or representatives in the General Assembly or of Levy Court  
Commissioners, the names of the persons elected, if of Sheriffs or  
Coroners the names of the persons elected and the number of votes  
given for each] *which is manifest by calculating and ascertaining*  
*the aggregate amount of the votes given for each person voted for ac-*  
*cording to the provision made by law in this behalf. In testimony*  
*whereof we the sheriff of the said county and the inspectors of the sever-*  
*al hundreds of the said county, who have this day met and ascertain-*  
*ed the state of the said election throughout the said county, as the law*  
*requires, have hereunto set our hands at the Court House in said*  
county on Thursday the day of October being the Thurs-  
day next succeeding the day of the election aforesaid in the year aforesaid: But if the Sheriff shall not be present at the board of canvass, so that there shall be another person presiding officer of said board; then omit the words "sheriff of said county," and, in place thereof, use the words "presiding officer of the board of canvass duly officiating because of the non-attendance (or death as the case may be) of the sheriff".

And the manner of making the insertion aforesaid may be as follows, to wit,

48 for com-  
pleting Certi-  
ficates

In case of Governor,  
votes were given for for Governor  
votes were given for for Governor  
and so on naming each person voted for ;  
In case of Representatives to Congress,  
votes were given for  
for Representative to Congress  
votes were given for  
for Representative to Congress :  
and so on naming each person voted for ;  
In case of Senator or Representatives in the General Assembly,—

in the General Assembly, *was duly chosen Senator for said county*  
 or *was duly chosen Senator for said county*  
 in lieu of *late Senator for said county in*  
 the General Assembly: *were duly chosen*  
*Representatives for said county in the General Assembly :*

In case of Sheriffs or Coroners,—  
 and *were duly chosen sheriffs [or*  
*coroners as the case may be] having received votes,*  
 and *having received votes;*

And in case of Levy Court Commissioners,—  
*was duly chosen Levy Court Commissioner*  
 for *hundred* *was duly chosen*  
*Levy Court Commissioner for hundred, and so on.*

And the certificate or return of an election shall not be rejected or questioned, because any person, who shall have acted as inspector of a hundred or any person, who shall have been taken as judge of an election, was not a freeholder ; and an objection for each cause shall not deprive the electors of any hundred of the benefit of their votes; but every person not being a freeholder, who shall act as inspector of a hundred or as a judge of an election, shall be guilty of an indictable offence, and shall upon conviction of such offence, be fined in a sum not less than fifty dollars nor more than one hundred dollars at the discretion of the court, and shall pay the cost of prosecution.

Sect. 10. It shall be the duty of the sheriff to preserve the ballot boxes containing the ballots, certificate and tally list deposited therein as aforesaid safely and secured in the manner, in which the same shall have been delivered to him, until the last day of February next after the election ; and if a sheriff shall not be presiding officer of a board of canvass ; then the said ballot boxes shall be delivered by the presiding officer of said board to the sheriff of the county safely and securely, as soon as circumstances will admit thereof.

Sect. 11. The inspector and freeholders, judges of the election, and the clerks shall during the time of the election being open be and continue in a room or place by themselves, separate from the other electors ; and no person, other than such inspector, freeholders and clerks, during the time of the election being open, shall be admitted within such room or place.

Sect. 12. Every sheriff or other officer, to whom a writ of election issued by the Speaker of either House to fill a vacancy in such House shall be delivered, shall immediately appoint a day for holding a special election pursuant to such writ ; which day shall not be more than five nor less than four days next after the day of receiving the writ exclusive of that day ; and the sheriff or other officer shall on the day next after receiving said writ except the same shall be Sunday and then on the Monday next following put up on the outside of the Court House door of his county and also in one of the most public places of each hundred of his county a proclamation reciting the said writ and the day by him appointed for holding a special election pursuant thereto and shall also deliver a written notice of such writ and of the day appointed for holding an election

49 Inspector or Judges, not freeholders — (return good)

50 indictable

51 Safe keeping of the ballot boxes containing the ballots

52 During election the Inspector, &c. to be in a place by themselves

53 Special election Sheriff's duty (53)

54 Notice to Inspectors (59)

## GENERAL ELECTION.

- 55 Inspector's duty pursuant thereto to the inspector of each hundred of his county, who served at the preceding General Election or in case such inspector of any hundred shall be dead, removed or unable to serve, then to the assessor of such hundred : and such inspector or assessor receiving such notice shall on the next day at farthest give public notice thereof by advertisements posted in at least five of the most public places of his hundred, stating the day and place of the election, and the officer or officers to be chosen : and the inspector of the hundred, who shall have served at the next preceding General Election, or in case of his death, removal or inability, the assessor of the hundred shall be the inspector for such special election, and if both inspector and assessor shall be absent from the place of election at nine of the clock in the morning of the day of holding the same, the electors present shall choose an inspector as prescribed by the fourth section of this act for choosing an inspector for the General Election : and every special election shall be held in each hundred at the place appointed by law for holding the General Election, and shall be carried on and conducted in the same manner and under the same regulations as the General Election ; and the inspectors of the several hundreds in the county shall on the day next following the day of holding every special election at twelve of the clock noon meet at the Court House of their county, and the sheriff of the county shall then and there attend ; and the certificates of the election in the several hundreds shall be produced and the state of the election throughout the county shall be ascertained and a certificate of the election shall be made and returned in the same manner and under the same regulations, as afore prescribed in case of the General Election ; and in case of the death or absence of the sheriff the coroner shall act ; and in case of his non-attendance, the prothonotary shall act ; and in case of his non-attendance, a presiding officer shall be chosen by the inspectors present ; as in case of the General Election : and the sheriff, or other presiding officer of the board of canvass, shall possess the same power for compelling the attendance of inspectors and obtaining the certificates of election as in case of the General Election : And writs of election may be issued by the Speaker of either House after an adjournment of the General Assembly : *Provided always,* That in case of a writ of election issued by the Speaker of the Senate after an adjournment without day of the General Assembly and before the first Tuesday of October, the same shall not be executed until the first Tuesday of October, unless a session of the General Assembly shall in the mean time be appointed or called by the Governor : and in case the writ shall not be executed until the first Tuesday of October, the election to fill the vacancy pursuant to such writ shall be held by the same officers and in all respects, as the General Election : and that a writ of election issued by the Speaker of the House of Representatives after an adjournment of the General Assembly without day shall not be executed unless the Governor shall issue a writ or order for convening the General Assembly. And the sheriff, or other officer appointing the day for a special election, shall, by writing under his hand, require each inspector or assessor, to whom he shall give notice of the writ and day appointed as aforesaid, to produce
- (13)
- 56 Meeting of Inspectors
- 57 board of canvass
- 58 Provision—Writ of election issued in vacation
- 59 Sheriff's notice to Inspectors

the certificate of such election in his hundred at the Court House of his county on the day next after the day of holding the election by twelve o'clock noon.

Sect. 13. Every Justice of the Peace, and every collector shall attend on every day of holding a General Election or a special election at the place of election in the hundred, in which he shall reside, from nine o'clock in the morning, till the election shall be closed : and every constable shall attend at the place of election in his hundred on the day of every General Election or special election from nine of the clock in the morning and shall there continue, until all the votes shall be read and tallied and the certificates of election in the hundred signed and the ballot box sealed. The collector shall have his duplicate and shall receive any tax or taxes offered ; and it shall be the duty of every Justice of the Peace and constable to take care, that the peace shall be kept and that the election shall not be interrupted or disturbed ; and every inspector from the time of opening a general or special election until the votes shall be read and tallied and the certificates signed and the box containing the ballots sealed, shall have power to command the peace and to require sureties of the peace from any person interrupting or disturbing the election or the officers in performance of their duties and to commit to prison for refusal or neglect to find such surety ; and all officers and other persons are required to obey the lawful commands of an inspector in this behalf : and if any Justice of the Peace, collector, or constable, shall refuse to perform, or wilfully neglect, the duties by this section enjoined upon him, or if any officer or other person shall wilfully neglect or refuse to obey the lawful commands of the inspector as above required ; every Justice of the Peace, collector, constable, or other person so offending shall, for every such offence, forfeit and pay to the State a fine of one hundred dollars.

60 Officers to attend elections  
Justices of the Peace  
Constables  
(63)

61 Collectors with duplicates to receive taxes

62 power of inspector to keep peace

63 penalty  
(83)

Sect. 14. If at any General Election or at any special election any inspector of a hundred or any freeholder taken by an inspector to his assistance shall knowingly and wilfully, take and receive, or advise and consent to the taking and receiving of, the vote of any alien or of any other person not entitled to vote : every such inspector and freeholder, for every such offence, shall forfeit and pay the sum of five hundred dollars to any person, who will sue for the same, to be recovered by action of debt in the Supreme Court or Court of Common Pleas, and shall further be liable to be indicted for having violated his oath or affirmation, and shall, upon conviction on such indictment, be adjudged guilty of wilful and corrupt perjury and shall incur and suffer all the pains, penalties and disabilities, to which a person convicted of wilful and corrupt perjury shall, according to the laws of the State at the time of committing such offence, be liable.

64 Receiving illegal votes  
penalty  
(79)

Sect. 15. If at any General Election or at any special election, any inspector of a hundred, and the freeholders by him taken to his assistance or a majority of them shall knowingly and wilfully refuse to receive the vote of any person entitled to vote at such election and in such hundred ; or if any such inspector or freeholder shall, knowingly and wilfully, advise and concur in such refusal ; every such inspector or freeholder shall, for every such offence, forfeit and pay to the State a fine of fifty dollars.

65 Refusing legal votes  
penalty  
(83)

66 Negli-  
gence or mis-  
behavior of  
officers, of  
election

Sect. 16. If any inspector of a hundred or assessor of a hundred or freeholder taken by any such inspector or assessor to his assistance at any General Election or special election or if any clerk appointed at any such election, or if any clerk of the peace, sheriff, coroner, prothonotary or other officer presiding at a board of canvass, shall refuse or wilfully neglect to perform or do every or either of the duties matters or things by this Act enjoined upon or required of such inspector, assessor, freeholder, clerk of the peace, sheriff, coroner, prothonotary, or other officer presiding at a board of canvass respectively, or shall refuse or wilfully neglect to observe, follow and conform to all the directions and provisions of this Act concerning such inspector, assessor, freeholder, clerk of the election, clerk of the peace, sheriff, coroner, prothonotary or other officer presiding at a board of canvass, or if any such inspector, assessor, freeholder, clerk of the election, clerk of the peace, sheriff, coroner, prothonotary, or other officer presiding at a board of canvass shall use any falsehood, fraud or deceit or be guilty of any corruption or misbehaviour in performing or doing any the said duties, matters or things; every such inspector, assessor, freeholder, clerk of the election, clerk of the peace, sheriff coroner, prothonotary, or other officer presiding at a board of canvass shall, for every such offence, forfeit and pay the sum of five hundred dollars to any person, who will sue for the same: *provided*, that nothing in this section contained shall extend to any matter or thing, which is particularly made punishable by any other section of this Act, by any fine, forfeiture, pain or penalty expressly provided by such other section for such matter or thing: and furthermore, the Senate of this State shall have power to compel a delivery to that body of a certificate of the election of Governor and of a certificate of the election of any member or members of that body and for that purpose to order and cause to be arrested and brought before them any sheriff, coroner, prothonotary, or other officer presiding at a board of canvass, and to adjudge him guilty of a contempt for neglect or refusal to deliver any such certificate, and to proceed against him accordingly: and the House of Representatives shall have power to compel the delivery of the certificate or certificates of the election of any members of that body in like manner and by like proceedings.

67 Power of  
Senate & H.  
of Reps.

68 Embez-  
zling, altering  
&c. a certifi-  
cate or return

penalty  
[83]

69 Ordering  
out militia  
penalty  
(83)

Sect. 17. If any inspector, sheriff, or other officer or person whosoever shall destroy, secrete, purloin, conceal or embezzle, or in any manner counterfeit, alter or vary, any certificate of election either of a hundred or of a county, or shall do any act or thing, whereby to prevent or hinder any such certificate from being duly produced, returned or delivered according to law; every such inspector, sheriff, officer, or other person shall, for every such offence, forfeit and pay to the State a fine of five hundred dollars.

Sect. 18. If any officer or other person shall call out or order any of the militia of this State to appear exercise or muster on any day of any General Election or of any special election or within ten days before any General Election, or three days before a special election or within three days after either of such elections, except in case of invasion or insurrection; every such officer or other person shall, for every such offence, pay to the State a fine of one thousand dollars.

Sect. 19. If any alien, or other person not entitled to vote, shall vote or offer to vote at any General Election or at any special election within this State; or if any person shall vote or offer to vote in a hundred, in which he shall not at the time of such voting or offering to vote reside; or if any person, having voted once, shall vote or offer to vote a second time at the same election either in the same or in another hundred; or if any person shall vote in two different hundreds at the same election; or if any person shall fraudulently deliver or offer to an inspector more than a single ballot; every such alien or other person shall, for every such offence, forfeit and pay the sum of one hundred dollars, to any person, who will sue for the same.

70 Illegal voting penalty (79)

Sect. 20. If any person shall on the day of a General Election, or of a special election or during the reading and tallying of the ballots at any place where such election is held or within one mile thereof, commit an assault or battery; or if any person shall interrupt or disturb the election or the inspector, freeholders and clerks or any of them in performance of any of their duties either in receiving reading or keeping count of the ballots, or shall interrupt or disturb the inspectors and sheriff or other presiding officer when assembled as a board of canvass in performing any of the duties of such board: every such person shall, for every such offence, be liable to be held to surety of the peace, and on failure to give such surety forthwith to be committed to prison, and shall further forfeit and pay to the State a fine of not less than ten dollars nor more than one hundred dollars.

71 Assault & battery—or disturbance of election, or board of canvass

(83)

Sect. 21. If any person or persons shall on the day of any General Election or of any special election or on the day next before or after such day make, set up or have any booth, stall or other temporary convenience for the purpose of selling spirituous or other liquors, or sell or expose to sale any brandy, rum, whiskey, wine, cider, perry, porter ale, beer, methiglin or other spirituous vinous or malt liquors at any place where such election shall be held or within two miles thereof or upon any highway or road leading to such place; every such person shall, for every such offence, forfeit and pay to the State a fine of twenty dollars: and it shall be the duty of the Justice or Justices of the Peace residing in any hundred and of the constable or constables of any hundred and every such Justice of the Peace and constable is required to abate, prostrate and remove any booth, stall or other temporary convenience set up or used for the purpose of selling spirituous or other liquors, that shall be at the place of election or within one mile thereof on the day of holding any General Election or special election or the day before or afterward, and to hold the person or persons having or using such booth, stall or other temporary convenience to surety of the peace, and in default of such surety not being immediately given to commit him, her or them to prison; and any Justice of the Peace or constable shall have authority to command the assistance of any citizen or citizens of this state in the premises; and no record need be made of any abating, prostrating or removing any booth stall or temporary convenience as aforesaid; but this Act and the truth of the case may in any suit be given in evidence under the general issue: *Provided always.*

72 Selling liquor, or having booth, stall, &c. for that purpose (83)

73 not to extend to taverns & stores

that nothing, in this section contained, shall extend to any licensed tavern keeper, merchant, store keeper, or other person or persons exposing to sale or selling any the liquors aforesaid in his, her or their proper tavern, store or other house in the same manner, as he, she or they may lawfully do at other times,

74 penalty on master not residing in town, &c. of election—if his negro slave servant, &c. be there on day of election

Sect. 22. If any negro or mulatto slave, servant or apprentice of any person not residing within the limits of any town in which an election shall be held, or within one half mile of the place of holding an election, that shall not be held within the limits of any town shall on the day of the General Election or of any special election, be found within the limits of such town or within one half mile of the place of holding any election that shall not be held within the limits of any town; the master or mistress or masters or mistresses of every such negro or mulatto slave, servant or apprentice shall forfeit and pay two dollars to any person, who will sue for the same, to be recovered with costs before any Justice of the Peace of the county. And if any free negro or free mulatto not residing within

75 penalty on free negroes not residing in town of election, &c. being there day of election

the limits of any town, where an election shall be held, or within one half mile of the place of election that shall not be held in any town, shall be found within the limits of such town or within one half mile of the place of election not held in any town on the day of the General Election or of any special election; every such free negro or free mulatto shall forfeit and pay the sum of two dollars to any person who will sue for the same, to be recovered with costs before any Justice of the Peace of the county: and it shall be lawful for any Justice of the Peace to cause any negro or mulatto slave servant or apprentice or any free negro or free mulatto that shall be found within the limits of any town, in which an election shall be held or within one half mile of the place of holding an election that shall not be held within any town on the day of any election contrary to the foregoing provision, to be brought before him and to be confined or imprisoned in the gaol of the county or other suitable and convenient place for any time not exceeding forty eight hours, and until the costs of the commitment and detention shall be paid: *Provided* that nothing in this section contained shall

76 imprisonment

77 exception

extend to the case of any negro or mulatto slave servant or apprentice, or any free negro or mulatto directly going to any such town or place for necessities for a sick person or to a physician or surgeon for medical assistance or surgical aid or on other necessary errand, and directly returning. And if any negro or mulatto slave, slaves, servant or apprentice or free negro or free mulatto shall be guilty of any riotous or disorderly conduct to the disturbance of any election or persons going to or from the same or shall behave disorderly within any town, where an election shall be held or within one half mile of the place of holding an election not held within the limits of a town it shall be lawful for any Justice of the Peace to cause every such negro or mulatto slave, servant or apprentice, free negro or free mulatto to be arrested and imprisoned for the space of twenty-four hours in the gaol of the county or other suitable and convenient place, and at the expiration of that time to be brought before the same or some other Justice of the Peace and further dealt with as to law may appertain.

78 disorderly conduct of negroes, &c. free or slaves

Sect. 23. Every forfeiture or penalty, which, under this Act,

shall be incurred and be payable to the person who will sue for the same, excepting cases expressly made cognizable before a Justice of the Peace, shall be recovered by action of debt in the Supreme Court or Court of Common Pleas ; and upon every suit or action for such forfeiture or penalty, it shall be lawful to require the defendant to give special bail in double the sum of such forfeiture or penalty upon affidavit of the person suing or of any credible person for him setting forth the facts, on the ground whereof such forfeiture or penalty shall have been incurred : which affidavit the officer issuing the writ or any Judge of any court in this State may administer : and it shall be lawful for any court, in which such suit shall be brought, upon it being made satisfactorily to appear to such court, that a fair and impartial trial cannot be had in the county, where the forfeiture or penalty was incurred or shall be alleged to have been incurred, to change the venue to an adjoining county : and in such case the trial shall be had in such adjoining county ; and in every such suit or action the plaintiff recovering a penalty or forfeiture shall also recover costs of suit. And for every offence, which according to this Act is punishable by a fine to the State or otherwise than by a forfeiture or penalty payable to the person suing for the same, the offender shall be proceeded against by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery within the county, where the offence shall be committed and shall upon conviction besides the fine or other punishment, be adjudged to pay the costs of prosecution.

Sect. 24. If any person shall give, offer or promise any reward, gift, favor or benefit to any man, to hire, bribe or influence him in giving his vote, or if any candidate shall influence or attempt to influence any man in giving his vote by any bribe, reward or promise of favor or benefit, or shall offer to serve for nothing, or for a less allowance, than that prescribed by law ; every such person or candidate shall forfeit and pay to the State a fine, not less than fifty nor more than two hundred dollars to be recovered with costs, by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery within the county where the offence shall be committed ; and if any such candidate shall be elected his seat or place shall, for such offence, be vacated and he rendered incapable of serving for the term for which he shall have been elected.

Sect. 25. And be it further enacted and declared, That in all elections in this State, except where it is or shall be otherwise expressly provided plurality or the highest number of votes do and shall make a choice, excepting where this principle is defeated by two persons having the same number of votes for the same office.

79 Suits and proceedings for penalties under this Act

80 Special bail

81 changing venue

82 costs

83 Indictment

84 Bribery—&c. promises, &c. to influence electors

85 Offering to serve for less than legal allowance

86 Forfeiture of office

87 plurality

*Passed at Dover, January 28, 1825.*

## II.

### AN ADDITIONAL SUPPLEMENT to the Act regulating the 1829 General Election.

The Inspector of Christiana hundred in Newcastle county, shall open the General Election, between the hours of eight opening and

88 Time of opening and



## ELECTION OF ELECTORS OF PRESIDENT

closing elec-  
tion in Chris-  
tiana hundred

and nine o'clock in the forenoon, and continue the same open until six o'clock in the afternoon. And 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.

*Passed at Dover, January 23, 1829.*

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ELECTION OF ELECTORS OF PRESIDENT  
AND VICE PRESIDENT.

1829 AN ACT directing the manner of appointing in this State Electors  
(Constitution of President and Vice-President of the United States.  
U. States, 35)

1 Electors  
chosen

2 time and  
place of elec-  
tion

(Gen'l Elec-  
tion—5)

3 each voter  
must vote for  
whole num-  
ber of electors

4 Governor's  
proclamation

5 Inspector

6 Duty of  
Sheriff

7 of Clerk of  
Peace

Section 1. 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 Election. 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.

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.

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.

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. (General Election—39)

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. 8 Sheriff's duty when Inspector's office vacant

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. 9 Such vacancy filled [Gen'l Election—18]

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. 10 Conducting the election (Gen. Elect'n 14—38)

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 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. 11 Meeting of Inspectors on the day next after the day of election

[Gen. Elect'n 41—48]

12 Certificate of election

13 in 3 days to Gov'r, to Sec'y of State, and to Cl'k of Sup. Court

14 Governor to make proclamation &c.

15 Governor to make proclamation &c.

16 Governor to make proclamation &c.

17 Governor to make proclamation &c.

18 Governor to make proclamation &c.

19 Governor to make proclamation &c.

20 Governor to make proclamation &c.

21 Governor to make proclamation &c.

22 Governor to make proclamation &c.

23 Governor to make proclamation &c.

24 Governor to make proclamation &c.

## ELECTION OF ELECTORS OF PRESIDENT

15 Failure to elect—convening General Assembly, & their proceedings

16 No member of either House eligible

17 certificates

18 Meeting of Electors

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 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.

Sect. 3. 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 (a) 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

(a) Extract from the Act of Congress of March 1, 1792, "relative to the election of a President and Vice President of the United States," &c.

[ Constitution U. S. 35, 36.] Section 1. Except in case of an election of a President and Vice President of the United States prior to the ordinary period, as hereinafter specified, electors shall be appointed in each State for the election of a President and Vice President of the United States within thirty-four days preceding the first Wednesday in December, one thousand seven hundred and ninety-two, and within thirty-four days preceding the first Wednesday in December in every fourth year succeeding the last election.

[ Constitution U. S. 37, 74 Amendments Art. XII] Sect. 2 The electors shall meet and give their votes on the said first Wednesday in December, at such place in each State, as shall be directed by the Legislature thereof; and the electors in each State shall make and sign three certificates of all votes by them given, and shall seal up the same, certifying on each, that a list of the votes of such State for President and Vice President is contained therein, and shall by writing under their hands or under the hands of a majority of them, appoint a person to take charge of, and deliver to, the president of the Senate, at the Seat of Government before the first Wednesday in January then next ensuing, one of the said certificates: And the said electors shall forthwith forward, by the post office, to the president of the Senate at the Seat of Government, one other of the said certificates and shall forthwith cause the other of the said certificates, to be delivered to the Judge of that district, in which the said electors shall assemble.

## AND VICE PRESIDENT OF THE U. STATES.

195

said day, the electors present shall appoint an elector in the place of him so not present. 19 their power to appoint

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 signed by the electors, out of any money in the treasury not otherwise appropriated. 20 Pay

Sect. 4. The Governor (b) 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. 21 Lists of Electors [b]

Sect. 5. 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. 22 Inspectors to deliver lists to Clerk of Peace

Sect. 6. The fifth, sixth, seventh, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, 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. 23 provisions adopted (Gen. Election.)

Sect. 7. 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. 24 Fees

*Passed at Dover, February 13, 1829.*

## ELECTION OF REPRESENTATIVES IN CONGRESS.

1829

*AN ACT prescribing the times places and manner of holding elections for Representatives in the House of Representatives of the United States.*

Section 1. An election for choosing a representative or representatives, as the case may be, for the people of this State in the House of Representatives of the United States in Congress shall be held on the first Tuesday of October in the year of our Lord one thousand eight hundred and twenty-six and on the first Tuesday of October every second year thereafter in the several counties of this State at the same places at which the election for members of the General Assembly of this State shall, for the time then being, be held in the said counties respectively: and such election, for representative or representatives in the House of Representa- 1 Time and place of holding election [Constitution U. S. 3-16] (Constitution 89) 2 how to be conducted

Sect. 3. The executive authority of each State shall cause three lists of the names of the electors of such State to be made and certified and to be delivered to the electors on or before the said first Wednesday in December: And the said electors shall annex one of the said lists to each of the lists of their votes. (b)

- 3 Votes canvassed & Returns  
(Gen. Elect'n 41-46-47)
- 4 Certificate & proclamation
- 5 Special election to fill vacancy
- 6 Writs by Governor  
(9)
- 7 Sheriff's duty
- 8 Inspector's
- tives of the United States shall be carried on and conducted in the same manner and form, by the same persons and officers, and under the same regulations in all respects, as the election for members of the General Assembly; and the votes given in each county for representative or representatives in the House of Representatives of the United States in Congress shall be calculated and ascertained at the same time and place, in the same manner and by and under the same means and regulations, as those for members of the General Assembly; and returns shall be made to the Governor as the law directs: and the Governor shall examine the returns without delay and declare the person or persons elected, and shall issue certificates under his hand and the great seal of the State; one of which he shall transmit to the Secretary of State of the United States and one to the person elected, or if more than one, to each of them: the returns shall be preserved in the office of the Secretary of State: and the Governor shall by proclamation make public the state of the vote by causing the same to be published in one or more of the public newspapers of this State.
- Sect. 2. Whenever a vacancy shall happen by death, resignation, or otherwise in the representation from this State in the House of Representatives of the United States, an election shall be held to fill such vacancy on such day, as the Governor shall appoint, in the several counties of this State at the same places, which at the time shall be prescribed by law for holding the General Election in the said counties; and to this end, the Governor shall issue writs of election to the sheriffs of the several counties respectively, reciting the vacancy and commanding each sheriff to cause an election to be held in his county on the day in said writ mentioned at the places by law prescribed for holding the General Election in said county, for choosing a representative in place of him, whose seat shall have so become vacant; which writ shall be delivered to each sheriff at least seven days before the day therein appointed for holding the election; and each sheriff shall on the day next after receiving such writ, except the same shall be Sunday, and then on the Monday following, put up, on the outside of the Court House door of his county and also at one of the most public places in every hundred of his county a proclamation reciting the said writ and requiring an election to be held pursuant thereto, and shall also deliver such a proclamation to the inspector of each hundred in his county, who shall have served at the General Election then next preceding, or in case of his death, removal or inability to serve, to the assessor of such hundred; and such inspector or assessor shall on the next day at farthest give notice of the election, by advertisements under his hand posted in at least five of the most public places of his hundred; and such election shall be carried on and conducted in the same manner and form, and by the same persons and officers, and under the same regulations in all respects, as a special election to supply a vacancy in either House of the General Assembly of this State: and the votes given in each county shall be calculated and ascertained at the same time and place and in like manner and by the same methods and regulations, as in case of such special election; and returns shall be made to the Governor, who shall declare the person elected and grant cer-

## ELECTION OF REPRESENTATIVES IN CONGRESS.

195

tificates and issue proclamation, as prescribed by the first section of this Act: *Provided always*, that it shall be in the discretion of the Governor, whether to appoint a day for holding such election before the first Tuesday of October next after the happening of such vacancy; and if the first Tuesday of October shall be appointed, then the election shall be held and conducted, and all the proceedings touching the same had, according to the provisions contained in the first section of this Act. 9 discretion of Governor

Sect. 3. If any sheriff, inspector, assessor or other person shall refuse or neglect to perform any duty enjoined or incumbent upon him according to the form and effect of this Act, such sheriff, inspector, assessor or other person shall, for every such offence, forfeit and pay to this State any sum not less than two hundred dollars nor more than five hundred dollars to be recovered by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery within the county, and for all other malfeasances, misfeasances, and misconduct, omissions of duty, and negligence, the same penalties and forfeitures shall be incurred, as are by law provided in respect to the General Election in the several counties in this State, to be recovered in like manner. 10 Penalties

*Passed at Dover, January 28, 1825.*

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## ELECTION OF SENATORS IN CONGRESS.

*AN ACT directing the time, place and manner of holding elections for Senators from this State, in the Senate of the United States.* 1825

Section 1. The Legislature of this State shall, at their annual meeting in January in the year of our Lord one thousand eight hundred and twenty-seven and at their annual meeting in January every sixth year thereafter and at their annual meeting in January in the year of our Lord one thousand eight hundred and twenty-nine and at their annual meeting in January every sixth year thereafter, in the Senate chamber in joint meeting of the Senate and House of Representatives, hold an election by ballot, for the purpose of choosing a Senator from this State in the Senate of the United States, for the constitutional term to commence on the fourth day of March next ensuing said session or sessions respectively: and a majority of all the votes given shall be necessary to a choice; but if upon any balloting two persons only shall be voted for and receive all the votes and each of them an equal number of votes, the Speaker of the Senate shall give an additional casting vote, unless he shall be one of said persons, in which case the Speaker of the House of Representatives shall give an additional casting vote, unless he shall be the other of said persons; and further, if upon twice balloting, more than two persons shall be voted for and one of said persons shall on each balloting receive one half the number of all the votes given, then on the second balloting the Speaker of the Senate may give an additional casting vote to the person having one half the number of all said votes, [Constitution U. S. 16]  
1 Time of election  
2 place and manner  
3 casting vote

## ELECTION OF SENATORS IN CONGRESS.

unless he shall be such person ; in which case or in case the Speaker of the Senate shall decline giving such additional casting vote, the Speaker of the House of Representatives may, if he deem proper, give an additional casting vote to the person having one half the number of all said votes, unless he shall be such person.

4 Certificate  
of election

Sect. 2. Three certificates of every election of Senator as aforesaid shall be made and signed by the Speaker of the Senate and by the Speaker of the House of Representatives and attested by the clerks of said Houses respectively ; and the Speaker of the Senate shall transmit one of said certificates by mail to the President of the Senate of the United States, one to the Senator elected and one to the Secretary of State of this State to be filed in the Secretary's office : which certificate shall be according to the following form, viz.—

*Delaware ss. Be it known, that the Legislature of the State of Delaware did, on the \_\_\_\_\_ day of January in the year of our Lord one thousand eight hundred and \_\_\_\_\_ at an election, in due manner held according to the form of the Act of the General Assembly of said State in such case made and provided, choose \_\_\_\_\_ to be a Senator, from the said State, in the Senate of the United States, for the constitutional term to commence on the fourth day of March next. Given under our hands, in obedience to the said Act of the General Assembly, the day and year aforesaid.*

5 vacancy

Sect. 3. If the seat of a Senator from this State in the Senate of the United States shall become vacant by death, resignation or otherwise than by the regular expiration of the term, the Legislature shall, at the next session of the General Assembly after the vacancy shall happen and if the vacancy shall happen during a session then at such session hold an election for the purpose of choosing a Senator to fill such vacancy ; and such election shall be conducted and held in the manner and upon the principles provided in the first section of this Act in relation to the election therein mentioned ; and certificates shall be made and transmitted in manner aforesaid ; and the form of the certificate shall be the same as before provided, excepting only that in lieu of the words "*for the constitutional term to commence on the fourth day of March next,*" the words *to fill the vacancy occasioned by the* of \_\_\_\_\_ *late a Senator from said State shall be inserted.*

*Passed at Dover, January 28, 1825.*

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## ENTAILS.

## I.

25 Geo II.

AN ACT for barring estates tail within this government.

Whereas the entailing of estates within this government would introduce perpetuities, prevent the improvement of such estates and disable tenants in tail from making provision for the younger

branches of their families: *And whereas* it hath been made a doubt, whether estates tail can legally be barred or docked by fines and common recoveries suffered within this government in like manner, as they may in that part of Great Britain called England: For the remedying whereof for the future:—

Section 2. All fines and common recoveries heretofore levied and suffered within this government or which at any time hereafter shall or may be levied or suffered therein in pursuance of or according to the common or statute laws of that part of Great Britain called England, in any of the Supreme Courts of this government, or in any of the Courts of Common Pleas within the county, where the lands, tenements, and hereditaments entailed do or shall lie, shall be and are hereby declared to be as good and available in law to all intents, constructions and purposes for the barring estates so entailed as aforesaid, as fines and common recoveries of lands, tenements, and hereditaments suffered or levied in that part of Great Britain called England may or can be. <sup>1 Fines & recoveries</sup>

Sect. 3. *Provided always*, That it shall and may be lawful for any heir at law or other person or persons claiming any right in the said lands, tenements, or hereditaments, either by Appeal or Writ of Error, as the case may require, to reverse such fines or recoveries for any error or errors, which heretofore have or hereafter may happen in levying or suffering the same.

II.

AN ACT concerning the barring of estates tail and other interests. 1829

Section 1. 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, the deed of alienation in fee simple of any person, of any lands, tenements or hereditaments, shall have the 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. <sup>2 Barred by deed [4]</sup>  
<sup>3 effect of deed</sup>  
<sup>4 a valid deed acknowledged or proved and recorded</sup>

*Passed at Dover, January 19, 1829.*



## I.

1805 AN ACT for the appointment of escheators, and to declare and regulate escheats.

- 1 Escheator--** **Section 1.** The Governor may and shall commission a person of integrity and ability in each of the counties of this State to be escheator of the county, who shall hold his office for the term of five years, if so long he shall behave himself well; and each of the said escheators, before he enters upon the duties of his office as is hereinafter required by this Act, shall give bond with two sufficient sureties to be approved by the Auditor of Accounts, who is hereby empowered to take the said bond, in the sum of five thousand dollars, to and in the name of the State of Delaware, for the faithful performance of the trust reposed in him by this Act; but no action shall be brought on the said bond unless commenced within seven years after the expiration of his said office. And the Governor, when any vacancy shall happen in either of the counties of this State by the death, resignation, or otherwise of any escheator, shall supply the said vacancy by the appointment of some other person of integrity and ability, who shall continue in office and give bond as aforesaid; and the said escheators shall moreover take the following oath or affirmation: *I A. B. do solemnly swear (or affirm) that I will well and sufficiently execute the office of escheator for the county of \_\_\_\_\_ and diligent inquest make for all property, which hath escheated or shall escheat to the State within my jurisdiction, according to the true intent and meaning of the Act, in that case made and provided.*
- 2 bond**
- 3 Limitation of action thereon**
- 4 Vacancy**
- 5 Oath**
- 6 escheat (30—34)** **Sect. 2.** From henceforth if any person, who at the time of his or her death was seized or possessed of any real or personal estate within this State, die intestate without heirs or any known kindred, who can inherit and hold the same, such estate shall escheat to the State, subject to all legal demands on the same: *Provided,* That nothing in this Act contained, shall be deemed or taken to extend to affect the right of the widow of such deceased to such share of his real and personal estate as she may be entitled to by law.
- (Intestate's real estate—3)**
- 7 Precept of Inquiry** **Sect. 3.** Each of the said escheators, upon his own knowledge or so often as information shall be given to him in his proper county of any person dying intestate and without heirs or any known kindred as aforesaid and who was at the time of his or her death seized or possessed of any real or personal estate within such county, shall forthwith issue his precept directed to the sheriff or coroner of the county, as the case may require, thereby commanding such sheriff or coroner to impanel and summon sixteen good and lawful men of the county, to come before the same escheator at some public and convenient place within the same county not less than ten nor more than twenty days thereafter, to inquire whether, as shall be alleged, the said person hath died without heirs or known kindred as aforesaid and whether such person was at the time of his or her death seized or possessed of any and what estate real or personal in the same county and also in whose hands or possession the same shall be; and when the said sixteen persons so im-
- 1 Feb. 1, 1806**

pannelled and returned as aforesaid or any twelve or more of them shall appear according to the summons aforesaid, they shall be sworn or affirmed as an inquest to inquire concerning the matters in the said precept set forth; and the said escheator and the said inquest, shall thereupon proceed to inquire by the testimony of competent witnesses duly sworn or affirmed and other lawful evidence concerning the matter in the said precept set forth and shall permit witnesses upon oath or affirmation made before him (which he is hereby empowered to administer) and other lawful evidence to be heard and adduced; and if any twelve or more of the said inquest shall find, that any such estate, real or personal, within the said county hath escheated to the State, an inquisition thereof shall be made, signed and sealed by the escheator and twelve or more of the inquest, that find the same, setting forth that the intestate person in the same precept named hath died without heirs or any known kindred as aforesaid, and specifying the estate real or personal, if any, of which such intestate died seized or possessed, and also the person or persons in whose hands or possession the same shall be; which inquisition to be taken as aforesaid shall be certified and transmitted by the said escheator, as soon as conveniently may be after the holding of such inquiry, into the office of the clerk of the Supreme Court.

8 inquiry  
(18)

9 inquisition

10 transmit-  
ted to Cl'k of  
Supreme Ct.

Sect. 4. Immediately upon the finding of such inquisition, the escheator shall issue his writ directed to the sheriff or coroner of the county, as the case shall require, commanding him to seize, attach and secure the goods and chattels so found, to be escheated as aforesaid, in whose hands soever the same shall be found; or if it be found by the said inquest, that the said goods and chattels be cloigned, then to seize and attach so much of the goods and chattels of the person or persons, who shall have cloigned the same, as shall be equal in value to the goods and chattels, which be cloigned; unless the person or persons, in whose hands or possession such goods and chattels be found, give bond to the State with sufficient surety to appear at the next Supreme Court thereafter to traverse the said inquisition, and likewise in case the same be confirmed, to render to the State the same goods and chattels found to be in his or her hands or possession; which writ so to be issued shall be duly returned to the escheator together with an inventory and appraisement of the goods and chattels, if any, which be seized and attached by virtue thereof; and the said sheriff or coroner shall thereupon sell the same goods and chattels at public auction after ten days public notice of such sale, and shall without delay pay over the money therefrom arising to the Treasurer of the State; a copy of which return, inventory and appraisement together with the account of sales of the same goods and chattels shall without delay be transmitted by the escheator to the Auditor of Accounts; and the said sheriff shall be accountable to the said Treasurer, as in other cases for the money, which by virtue of this Act shall come to his hands; and in case of lands or hereditaments, which may be found to be escheated to the State, the said escheator shall lease the same for any term not exceeding three years to the person or persons, who at the time of finding the inquisition concerning the same, shall be in possession thereof, provided he or they give a reason-

11 Writ of sei-  
zure

12 persons in  
possession  
may give  
bond, & retain

13 return of  
writ—sale of  
goods

14 papers to  
be transmit-  
ted to Auditor

15 lands to be  
leased

- 16 person in possession claiming title, bond, &c. able rent therefor; and if the person or persons so in possession claim title thereto, he, she or they shall give bond, with sufficient surety as aforesaid, to be taken and approved by the escheator, to prosecute his, her or their claim before the Supreme Court in manner hereinafter directed and also to pay to the State a reasonable rent for the annual profits of the same lands and hereditaments, in case the judgment of the said court shall establish the title of the State; and in case such tenant or tenants in possession will not accept of a lease as aforesaid and give such bond as aforesaid, the escheator shall lease the same lands and hereditaments during the term aforesaid to some other tenant or tenants of sufficient ability and issue his writ in the nature of an *habere facias possessionem* directed to the sheriff or coroner of the county, as the case may require, commanding him to remove the tenant or tenants of the premises out of possession, and to deliver possession thereof to such lessee or lessees.
- 17 Writ of possession
- 18 Claimants heard Sect. 5. After the return of such inquisition as aforesaid into the office of the clerk of the Supreme Court as aforesaid, if there be any, that claim the estate, real or personal, so as aforesaid found to be escheated, he, she or they shall be heard without delay upon a traverse to the office *monstrans de droit* or petition of right; and the testimony taken in writing on finding of the inquisition concerning the same land shall be admitted as legal evidence on the part of the State; but if no such claim be made, to the lands so found to be escheated as aforesaid, within seven years next after the inquisition concerning the same be returned into the office of the clerk of the Supreme Court; or if upon claim the title of the State be established to any lands, which are found to be escheated as aforesaid; in such case the clerk of the Supreme Court shall certify to the escheator, that no claim had been made, or that, if such claim had been made, judgment thereupon had been rendered against the same and the title of the State to the said land established; whereupon the said escheator shall proceed to make sale, by public auction of the premises to him, her or them, who will offer the best and highest price for the same: such sale to be, after public notice of the time and place of holding thereof and together with the conditions thereof advertised at least one month in one or more of the newspapers of this State (if any there be at the time) and also by advertisements in the most public places in the county, where the lands lie; and immediately after the sale as aforesaid shall be made, the escheator shall certify the name, surname and addition of the purchaser of the lands sold by him, as herein before directed, to the Governor, who on filing such certificate in the office of the Secretary of State, together with an acquittance from the State Treasurer for the price bid or offered as aforesaid, shall by deed under the great seal grant the said lands and hereditaments to the purchaser thereof to hold to him or her, his or her heirs and assigns forever: subject nevertheless to any reversion, remainder, lease, rent, common mortgage or incumbrance on the said lands, as the said lands, respectively, were subject to before the finding of the inquisition touching the particular land so sold: *Provided always*, That the person or persons, who were entitled to such reversion, remainder, lease, rent, common mortgage
- 19 depositions taken on holding inquiry
- 20 if no claims in 7 years--or if title of State established--Cl'k to certify
- 21 Sale of premises
- 22 Notice thereof
- 23 Sale certified to Gov't deed
- 24 subject

or incumbrance, had previously to the sale of the said lands, exhibited his, her or their claim to the Supreme Court, and established his, her or their title to the same, in default of which they shall forever be debarred from recovering the same.

25 Claimants, in certain cases, to receive the money paid into Treasury

Sect. 6. If any person shall, within seven years next after the sale of any lands as herein before directed, appear and make claim thereto in manner aforesaid and establish his, her or their claim to the same, as herein after directed; in such case and not otherwise such person shall be entitled to receive from the Treasurer of this State, by virtue of a warrant for the same signed by the Governor, all such money as the State shall have received on the sale of such lands, after all charges thereon be deducted; and if any person, within five years next after the sale of such goods and chattels as aforesaid, shall make his or her claim in manner herein before directed and establish his or her right thereto as herein after provided, he or she shall in like manner as in the case of real estate, by warrant of the Governor, receive all such money, as had been received by the State for the same goods and chattels, after all charges thereon deducted.

Sect. 7. If at the time of sale as aforesaid any person having claim to the goods and chattels or to the lands so sold as aforesaid, be out of this State, covert baron, imprisoned, an infant or insane, such person, if an inhabitant of this State, shall be allowed, in the case of goods and chattels, two years, and in case of real estate, four years, to be computed from and after the return of such claimant into this State, becoming discoverd, at large, attaining of full age or recovering sound mind and memory, as the case may be, to make his or her claim to such estate respectively; and any person having claim to such real or personal estate, who at the time of such sale shall not be an inhabitant of this State, yet be of full age and of sane mind and memory, such person continuing to reside elsewhere shall be allowed to make his or her claim as aforesaid within seven years to be computed from and after the sale of the goods and chattels, and seven years to be computed from and after the sale of the lands by such person so claimed.

26 provision in respect to infants, married women, persons out of the State, &c.

Sect. 8. If any person, at the time of the death of any intestate as aforesaid, shall be indebted to such intestate, or if any part of the estate, real or personal, which was of such intestate and not mentioned and included in such inquisition, be in the hands or possession of any person dwelling within this State, the same shall be recovered to the use of the State by action of debt, trover or upon the case for money received for the use of the State, or such action or suit as the case may require, in which proceedings respectively the inquisition touching the estate of such intestate shall be admissible evidence to prove, that the same intestate died without heirs or known kindred, as herein before described.

27 Suits by the State for debts or property escheated

28 inquisition evidence

Sect. 9. The person, who shall first inform the Governor, after six months from the passing of this Act by writing signed by such person in the presence of two subscribing witnesses of any escheat, which has or may hereafter happen within this State, and who shall procure necessary evidence to substantiate the title of the State to the same, and shall prosecute the right of the State thereto with effect, shall be entitled to one fifth part of the price, which

29 The person giving first information of escheat Share

such goods and chattels, or one tenth part of the price, which such lands respectively, shall have produced, after all costs of prosecution and charges of sale be deducted therefrom.

30 on security Sect. 10. *Provided nevertheless,* That before such fifth part be paid to the person, who shall first give information as aforesaid, his or her heirs or representatives (which payment shall be by warrant for the same signed by the Governor on the Treasurer of the State,) bond with sufficient freehold security to be taken and approved of by the Governor shall be given to the State, conditioned *to refund the same or any part thereof, as the case may be, if any claimant to the estate, upon which one fifth or one tenth part shall become payable, appear within the time herein before limited, touching such estate and establish his or her title to the goods and chattels or lands respectively, which shall have been sold as aforesaid.*

31 All cases of  
escheats  
within this  
Act  
(6. 35) Sect. 11. In all cases, where escheats have heretofore happened or shall hereafter happen, they and each of them shall be inquired of by the escheator, decided upon like traverse and claim, and under the like limitations of time for making such traverse and claim, exposed to sale, and sold in like manner as is herein before provided as to escheats for want of heirs; and the money thence arising shall belong and go as is herein before directed.

32 Fees Sect. 12. The fees and reward of the escheators shall be as follow :

Escheator For receiving and filing each information, two dollars and sixty seven cents.

For issuing writs or precepts to the sheriff or coroner, two dollars,

For filing return, fifty cents.

For every subpœna for witnesses, (four to be named in each, if so many there be,) seventy-five cents.

For calling and attesting the jury of inquiry, and holding, drawing and filing the inquisition, five dollars.

Attesting each witness, twenty-five cents.

For examining witnesses and reducing their testimony to writing, for each line of twelve words, four cents.

For all copies, (besides the certificate,) for each line of twelve words, two cents.

For a certificate, (besides the copy,) one dollar.

For drawing bond to traverse the inquisition, if necessary, one dollar.

For filing the same, fifty cents.

Executing every lease, and filing the counterpart, (the expense of drawing the same to be paid by the lessee,) two dollars.

Clk, sl. &c. And the fees of the clerk, sheriff and other officers of the court, and witnesses, shall be the same as they are entitled to receive for similar services in the same court.

And each juror shall receive for his services, one dollar per diem, and three cents a mile for travelling charges.

33 Conveyances, devises, Sec. 10, and by Aliens (Aliens) Sect. 13. All gifts, grants, bargains, sales, conveyances and devises of any lands, tenements, and hereditaments within this State heretofore made to any person or persons, who at the time of making the same was or were an alien or aliens, shall be good and effectual and shall be construed and taken to be good and effectual

to vest in the grantee or grantees, bargainee, or bargainees, devisee or devisees such estate and interest and as good a right and title in and to the same, as he or they could have taken by the same gift, grant, bargain, sale, conveyance or devise, if he or they had been legally naturalized at the time of making the same; and all deeds and conveyances made of any lands, tenements and hereditaments within this State by any such alien or aliens, or his or their legal representatives or by virtue of any legal process directed to the sheriff or coroner shall be as good and effectual and shall be construed and taken to be as good and effectual to vest in the grantee or grantees, bargainee or bargainees, devisee or devisees, such estate, and as good a right and title in and to the same lands, tenements and hereditaments, as such grantee, bargainee or devisee could have taken by the same, if the grantor, bargainor or devisor had been legally naturalized at the time of making such grant, bargain, sale, conveyance or devise last mentioned.

*Passed at Dover, January 23, 1805.*

## II.

**A SUPPLEMENT** to the Act, "entitled, "An Act for the ap- 1806  
pointment of escheators, and to declare and regulate escheats."

Section 2. Where any Escheator shall hold an inquiry upon any lands and tenements, goods and chattels (cases of information given to the Governor excepted) and shall previously to his holding any such inquisition obtain a written opinion from the Attorney General, that such lands and tenements, goods and chattels so inquired on have escheated, then the said escheator is hereby directed to make out a bill of all the costs of holding such inquiry and make a report thereof to the General Assembly; and the said costs being examined and approved shall be allowed; and the said Attorney General is hereby directed upon a case stated to him by any of the escheators in this State, to give his written opinion thereon *ex officio*.

34 Costs of inquiry, when paid by State

Sect. 3. *Whereas*, Doubts have arisen on the construction of the eleventh section of the Act to which this is a supplement, whether cases of escheats, which have heretofore happened for want of heirs, be within the provision of the said section:—In all cases where escheats have heretofore happened for want of heirs or otherwise, except as is excepted in the thirteenth section of the said Act, they and each of them shall be inquired of by the escheator, decided upon like traverse and claim and under like limitations of time for making such traverse and claim, expose to sale in like manner as is in the said Act, to which this is a supplement, provided as to escheats, which should thereafter happen for want of heirs; and the money thence arising shall belong and go as is therein directed.

35 Escheats that have heretofore happened on default of heirs

Sec. 4. If any person shall have been absent and out of the State, or shall hereafter be absent and out of the State for seven years together and no evident proof be made of his or her life, in any such inquest held or to be held under and by virtue of this Act or the

36 7 years absence

Act, to which this is a supplement, he or she shall be accounted and taken to be dead, any law, usage or custom to the contrary notwithstanding.

*Passed at Dover, February 1, 1806.*

—o—

## EXECUTION.

### I.

Between  
1726 & 1736

#### AN ACT for taking lands in execution for payment of debts.

To the end that no creditors may be defrauded of their just debts due to them from the persons who have sufficient real, if not personal, estates, to satisfy the same ;

1 Lands, &c.  
liable to execution  
(Ex'rs & Admin'rs 69)

Sect. 1. All such lands, tenements or hereditaments whatsoever within this government where no sufficient personal estate can be found, shall be liable to be seized and sold upon judgment and execution obtained.

2 Elegit  
(26—32)

Sect. 2. *Provided always*, That it shall not be lawful for any sheriff or other officer, by virtue of any executions or of any writ or writs thereupon, to sell or expose to sale any such lands, tenements, or hereditaments in this government, which shall or may yield yearly rents and profits, beyond all reprises, sufficient within the space of seven years to satisfy or pay such debts or damages with the costs of suit ; but that all those lands, tenements and hereditaments shall by virtue of the writ or writs of execution be delivered to the party obtaining the same until the debt and damages be levied by a reasonable extent in the same method and manner as lands are delivered upon writs of *elegit* in England.

3 But if rents  
not found, on  
inquiry, suffi-  
cient to pay  
in 7 years  
(23, 34—37)

Sect. 3. *Provided nevertheless*, That if the clear profits of such lands or tenements shall not be found by the valuation of two judicious and substantial freeholders upon their oaths or affirmations to be sufficient within seven years to satisfy the debt and damages in such executions ; or if before the extent be out, any other debt or damages shall be recovered against the same debtor or defendant, his heirs, executors or administrators, which with what remains due upon that extent cannot all be satisfied out of the yearly profits of the lands and tenements so extended within seven years ; then and in every such case the sheriff or other officer shall accordingly certify the same upon the return of such executions ; whereupon writ or writs of *venditioni exponas* shall issue forth to sell such lands or tenements for and towards satisfaction of what shall so remain due upon such extent as also towards satisfaction of all the rest of the said debts or damages in manner as is herein after directed concerning the sale of other lands.

4 Ven Ex.  
(37)

5 Levavi faci-  
as

Sect. 4. It shall and may be lawful for the sheriff or other officer by a writ of *levavi facias* to seize all lands in execution which are unimproved, and all such lands and tenements, which yield no yearly profit, and thereupon with all convenient speed either with or without any writ of *venditioni exponas* to make public sale thereof for the most they will yield, and pay the price or value of

the same to the party towards satisfaction of his debt, damages and costs; but before any such sale be made, the sheriff or other officer shall cause so many writings to be made upon parchment or good paper, as the debtor or defendant shall reasonably desire or request, or so many without such request, as may be sufficient to signify and give notice of such sales or vendues and of the day and hour when, and the place where, the same will be, and what lands and tenements are to be so sold, and where they lie, which notice shall be given to the defendant, and the said parchments and papers fixt by the sheriff or other officer in the most public place of each hundred in the county where the land lies, at least ten days before sale: and upon such sale the sheriff or other officer shall make return thereof indorsed or annexed to the said *levari facias* and give the buyer a deed duly executed and acknowledged in court for what is sold, as has been heretofore used upon the sheriff's sale of lands: But in case the said lands and hereditaments so to be exposed cannot be sold; then the officer shall make return upon the writ, that he exposed such lands or tenements to sale and the same remained in his hands unsold for want of buyers; which return shall not make the officer liable to answer the debt or damages contained in such writ; but a writ called *liberari facias* shall forthwith be awarded and directed to the proper officer, commanding him to deliver to the party such part or parts of those lands, tenements, or hereditaments, as shall satisfy his debt, damages and interest from the time of the judgment given with costs of suit according to the valuation of twelve men, to hold to him as his free tenement in satisfaction of his debt, damages and costs, or so much thereof as those lands, by the valuation of twelve men as aforesaid shall amount unto; and if it fall short, the party may afterwards have execution for the residue against the defendant's body, lands or goods, as the laws of this government shall direct and appoint from time to time concerning other executions; all which said lands, tenements, hereditaments and premises so as aforesaid to be sold or delivered by the sheriff or officer aforesaid with all their appurtenances shall and may be quietly and peaceably held and enjoyed by the person or persons or bodies politic, to whom the same shall be sold or delivered and by his and their heirs, successors or assigns, as fully and amply and for such estate and estates and under such rents and services, as he or they, for whose debt or duty the same shall be so sold or delivered, might, could or ought to do at or before the taking thereof in execution.

Sect. 5. And forasmuch as divers persons have mortgaged their lands and tenements in this government for securing the payment of monies; and some of them have died before the time of payment and left others to succeed them, that have proved insolvent, and others have neglected to pay the mortgage money; and so mortgages are become no effectual security, considering how low the annual profits of tenements and improved lands are here and the discouragement which the mortgagees meet with by reason of the equity of redemption remaining in the mortgagers;—When default or defaults have been or shall be made or suffered by any mortgager or mortgagers of any lands, tenements, or other hereditaments within this government or by his, her, or their heirs,

6 Notice of sale

(41)

7 to defend't

8 & public

9 deed

(40—50)

10 Liberari facias  
(52)

11 execution for residue

12 title under sale, &c.

13 Scire facias on Mortgage



11 when

15 Levati fa-  
las16 Title un-  
der sale, &c.  
(15)

executors, administrators or assigns, of or in payment of the mortgage money or performance of the condition or conditions, which they or any of them should have paid or performed or ought to pay or perform, in such manner and form and according to the purport, tenor and effect of the respective provisos, conditions or covenants comprised in their deeds of mortgage or defeasance, and at the days, times and places in the same deeds respectively mentioned and contained; in every such case it shall and may be lawful to and for the mortgagee or mortgagees and him, her or them, that grant the deeds of defeasance, and his, her or their heirs, executors, administrators and assigns at any time after the expiration of twelve months next ensuing the last day, whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid, to sue forth a writ or writs of *scire facias*, which the clerk of the Court of Common Pleas for the county, where the said mortgaged lands or hereditaments lie or be, is hereby required and empowered to make out and despatch, directed to the proper officer, requiring him by honest and lawful men of the neighborhood to make known to the mortgager or mortgagers, his, her or their heirs, executors or administrators, that he or they be and appear before the said court or courts to shew, if any thing he, she or they have to say, wherefore the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage-money with interest or to satisfy the damages, which the plaintiff in such *scire facias* shall upon the record suggest for the breach of non-performance of the said conditions; and if the defendant in such *scire facias* appears, he or they may plead satisfaction or payment of part or all the mortgage money or any other lawful plea in avoidance of the deed or deeds, as the case may require. But if the defendants in such *scire facias* will not appear at the day, whereon the said writ shall be made returnable, then definitive judgment therein, as well as all other judgments to be given upon such *scire facias*, shall be entered, that the plaintiff in such *scire facias* shall have execution by *levari facias* directed to the proper officer; by virtue whereof the said mortgaged premises shall be taken in execution and exposed to sale and upon sale conveyed to the buyer or buyers thereof, and the principal money and interest with all costs and charges rendered to the mortgagee or creditor; but for want of buyers, to be delivered to the mortgagee or creditor in manner and form, as is herein before directed concerning other lands and hereditaments to be sold and delivered upon executions for other debts or damages. And when the said lands and hereditaments shall be so sold or delivered as aforesaid, the person or persons to whom they shall be so sold or delivered, shall and may hold and enjoy the same with their appurtenances, for such estate or estates, as they were sold or delivered, clearly discharged and freed from all equity and benefit of redemption and all other incumbrances made and suffered by the mortgagers, their heirs or assigns; and such sales shall be available in law; and the respective vendees, mortgagees or creditors, their heirs and assigns shall hold and enjoy the same, freed and discharged as aforesaid. But before such sales shall be made, notice shall be given in writing in manner and form, as is

herein above directed concerning the sales of lands upon executions, any law or usage to the contrary notwithstanding.

Sect. 6. When any of the said lands, tenements or hereditaments, which by the direction and authority of this Act are to be sold for payment of debts and damages in manner aforesaid, shall be sold for more than will satisfy the same debts or damages and reasonable costs; then the sheriff or other officer, who shall make the sale, must render the overplus to the debtor or defendants; and then and not before the said officer shall be discharged thereof upon record in the same court, where he shall make return of his proceedings concerning the said sales. 17 Overplus

Sect. 7. *Provided also*, That no sale or delivery which shall be made by virtue of this Act shall be extended to create any further term or estate to the vendees, mortgagees or creditors, than the lands or hereditaments so sold or delivered shall appear to be mortgaged for by the said respective mortgages or defeasable deeds. 18 No greater estate under sale than expressed in mortgage

Sect. 8. If any of the said judgments, which do or shall warrant the awarding of the said writs of execution, whereupon any lands, tenements or hereditaments have been or shall be sold, shall at any time hereafter be reversed for any error or errors; then and in every such case, none of the said lands, tenements, or hereditaments so as aforesaid taken or sold or to be taken or sold upon executions nor any part thereof shall be restored, nor the sheriff's sale or delivery thereof avoided; but restitution in such cases only of the money or price, for which such lands were or shall be sold. 19 lands not restored, tho' judgment reversed

## II.

AN 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. 1788

Section 4. And to prevent the ill consequences arising from the want of an actual and regular return of the execution process usually directed to sheriffs, for levying the sums of money mentioned therein of the lands, goods and chattels of defendants:—The respective sheriffs of each of the counties in this State shall before the rising of the court, to which such process shall be returnable, on the second day after the return day in such process mentioned, make actual return of each writ of *feri facias*, with his the said sheriff's certificate of what he hath done thereon in usual and legal form; and where the levy or seizure by virtue thereof shall have been of goods and chattels unsold at such return day, the said sheriff shall annex to such writ a schedule or inventory of each article of those goods and chattels, with an appraisement of the same duly made and certified, so that their value may be judged of; and where such levy or seizure hath been of lands, the said sheriff's return shall specify the principal improvements thereon, if any, as well as the known or computed quantity and situation of the same; and the said sheriff shall also in such case annex to the said writ a schedule or inquisition testifying whether the yearly rents and profits, beyond all reprises, of the lands and tenements, so ta- 20 Return of execution process 21 when 22 and what it must contain 23 if lands levied on

ken in execution, be sufficient within seven years to satisfy the debt and damages in such executions, agreeable to the directions of the existing laws of the State. And where the levy or seizure in either of the cases aforesaid shall be returned as made subject to prior executions, the said sheriff shall in his indorsed or annexed return set forth as well the names of the plaintiffs in such prior executions, as shall have come to his hands, as the sums thereby to be levied: And in case any sheriff shall neglect or refuse to make such return of each writ of *feri facias* to him directed within the time above limited, he shall be answerable for the debt, damages, and costs in the said *feri facias* mentioned in the same manner, as if he had returned thereon levied to the value of the sum or sums of money therein mentioned, and may and shall be proceeded against accordingly.

Passed, June 11, 1788.

### III.

#### 1807 AN ACT for the more effectual executing of the writ of elegit.

24 if levy be subject to prior executions  
25 consequence to Sh'ff of neglect

Section. 1 Whenever any writ of elegit shall be directed to any sheriff of any county in this State for the delivery of any lands, tenements and hereditaments to the party obtaining the said writ, it shall be the duty of the sheriff to inquire by the same jury, by whom he shall inquire of the value of any such lands, tenements and hereditaments, upon their oaths or if any of them be conscientiously scrupulous of taking an oath, upon his or their affirmation or affirmations into the title of the person or persons, against whom any such writ shall be issued, to such lands, tenements and hereditaments, and shall certify the same inquest indorsed and annexed to the said writ together with the said writ to the court, from which such writ issued; and if it shall be found by the said inquisition, that the said lands, tenements and hereditaments are liable to be taken in execution for the satisfaction of the debt or damages with the costs of suit mentioned in the said writ thereupon the court shall award a writ, in the nature of a writ of *habere facias possessionem*; whereupon the sheriff shall deliver to the plaintiff or plaintiffs his, her or their agent the said lands, tenements and hereditaments, and remove from the possession of the same the person or persons possessed thereof and all persons, who may have become possessed of the same at any time after the date of the said inquisition; *Provided nevertheless*, if the sheriff, when he enters upon any such lands, tenements and hereditaments to execute any such writ of elegit, shall find the defendant or defendants or their or either of their executors or administrators or any person or persons holding under such defendant or defendants, executor or executors, administrator or administrators or any one or more of them in possession of the said lands, tenements and hereditaments, then and in every such case he shall remove the said defendant or defendants or their, or either of their executors or administrators, or other person or persons holding under such defendant or defendants or their, or either of their executor or executors, administrator or administrators, or any one or more of them from

26 On executing Elegit inquiry into title  
27 and if lands are liable to be taken  
Writ of possession  
28 defendant or any under him  
to be removed without inquiry

the possession thereof and deliver the same to the said plaintiff or plaintiffs, his, her or their agent, without inquiring as aforesaid into the title of the person or persons, against whom any such writ shall be issued, to such lands, tenements and hereditaments. *And provided also*, That when the person or persons, against whom any such writ is issued, is or are owners of any undivided share or shares only of any such lands, tenements and hereditaments, that then and in such case the other owner or owners of the undivided share or shares shall not be removed from the possession of his, her or their share or shares of such lands, tenements and hereditaments; but the share or shares only of such defendant or defendants, against whom such writ shall be issued, shall be delivered; and such owner or owners only shall be removed from his, her or their possession as aforesaid.

29 other owners than defendant, &c. not affected

Sec. 2. The finding of the said jury upon such writ of elegit shall not be conclusive upon the person or persons in possession of said lands, tenements and hereditaments at the time of such finding nor upon any other person or persons whatsoever; but it shall be lawful for the said person in possession thereof at the time of such finding, after he, she or they shall be removed from such possession as aforesaid and for all other persons, at any time whatsoever, to institute an action or actions of ejectment or any other proper legal remedy for the recovery of the possession of said lands, tenements and hereditaments notwithstanding such finding as aforesaid, and thereupon recover the possession of such lands, tenements and hereditaments, in case the same were not liable to be taken in execution for the satisfaction of said debt and damages with the costs of suit as in other cases. *Provided* the plaintiff or plaintiffs in any such action shall obtain the verdict of the jury and the judgment of the court upon such trial.

30 Inquisition not to be conclusive [32]

31 Ejectment after removal

Sec. 3. In case the said jury shall upon such inquiry as aforesaid find that the said lands, tenements and hereditaments are not liable to be taken in execution for the satisfaction of said debts and damages with the costs of suit, it shall be lawful for the plaintiff or plaintiffs in any such writ of elegit to proceed in such manner, as he might do before the passing of this Act, and such finding shall not be conclusive against such plaintiff or plaintiffs.

32 Inquisition not to be conclusive on plaintiffs

Sec. 4. It shall be the duty of the Justices of the Supreme Court and of the Court of Common Pleas respectively to frame and adopt the form of the writ of elegit and of a writ of habere facias possessionem and also of the oath or affirmation to be administered to the said jurors, conformably to the true intent and meaning of this Act, as near as may be to suit the several cases, which may arise in the said courts, so that no person may be delayed for want of form.

33 Justices of Courts to frame writs, &c.

*Passed at Dover, February 2, 1807.*

#### IV.

AN ACT to authorize the sheriffs for the time being to hold inquisitions on lands taken in execution by former sheriffs. 1803

Section 1. In all cases where any lands and tenements have

84 Inquisition  
on lands by  
whom held in  
certain cases

been taken in execution or hereafter may be taken in execution by virtue of any writ or writs of fieri facias, it shall and may be lawful for the sheriff in office or for the person, who hath seized and taken in execution or who shall hereafter seize and take in execution such lands and tenements, at the election of the plaintiff or plaintiffs in such suits, to inquire, whether the yearly rents and profits, beyond all reprises, of the lands and tenements so taken in execution, be sufficient within seven years to satisfy the debt and damages in such executions, agreeably to the directions of the existing laws of this State, and such inquisition to return to the proper officer of the court from whence such writs issued, who shall annex the same to the said writ or writs; whereupon it shall be lawful for the plaintiff or plaintiffs in such suits to proceed for the legal recovery of his or their debt and damages therein mentioned:

35 Not to  
discharge li-  
ability incurr'd  
(23. 25)

*Provided nevertheless,* That nothing in this Act shall extend to the discharging of any sheriff or other officer from the debt, damages and costs in any writ of fieri facias mentioned, for which he hath or may hereafter become answerable by the Act, entitled, "An 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."

36 Rule to  
hold inquisi-  
tion

Sect. 2. It shall and may be lawful for every plaintiff, his agent or attorney, upon motion to the court or in vacation upon application to the clerk or prothonotary, to obtain a rule to be laid on the sheriff in office or upon the person, who hath seized and taken in execution or who hereafter may seize and take in execution any lands and tenements as aforesaid by virtue of any writ or writs of fieri facias, to hold an inquisition as aforesaid upon such lands and tenements and to return the same within thirty days next after the date of the said rule; and if the said rule shall be laid on any sheriff, who did not take such lands and tenements in execution; it shall contain the names of the parties, both plaintiff and defendant, the term to which the said writ or writs of fieri facias were made returnable, the amount of the debt, damages and costs expressed therein and the description of the lands and tenements returned on the writ by the person, who made the levy or seizure of the said lands together with the real debt and interest, if any be indorsed on the said writ or writs; and the said rule shall be served on the sheriff in office or on the person, who made or hereafter shall make such levy or seizure, in writing at least ten day before the expiration thereof: and if the sheriff in office or person who made or hereafter shall make such levy and seizure, shall neglect or refuse to hold such inquisition and make return thereof as aforesaid, he shall be and is hereby declared to be guilty of a contempt to the court, in which the said rule shall be laid, and shall and may be proceeded against as in other cases of contempt.

37 Sheriff ne-  
glecting, con-  
tempt

*Passed at Dover, February 2, 1802.*

## V.

A SUPPLEMENT to an Act, entitled, "*An 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.*" 1788

Whereas it may be inconvenient in many cases, to direct writs of *venditioni exponas* to the sheriff in office, where executions have been, or may be, laid by his predecessor, and no sales made, or actually had, of the property so taken in execution :

Section 1. All writs of *venditioni exponas* hereafter to be issued in this State for the sale of any goods and chattels, lands and tenements, that have been or hereafter shall be seized and taken in execution by virtue of any writ of *feri facias* issued or to be issued, shall and may be issued and directed to the Sheriff in office or his immediate predecessor, he having seized and taken in execution such goods and chattels, lands and tenements, at the election of the plaintiff or plaintiffs in such suits ; and all proceedings had and sales made in virtue thereof shall be good and available in law. 38 Ven Ex. directed to Sh'ff in office or predecessor in certain cases

Sect. 2. Every such person, to whom such writs of *venditioni exponas* shall or may be directed, in case of neglect or failure in the execution thereof or making returns thereon shall be subject to all such rules of court, suits, fines, and other process and proceedings, as any sheriff is or can be liable to in like cases. 39 neglect

Sect. 3. All deeds made for lands sold by virtue of such writs of *venditioni exponas* by such predecessor shall be deemed good and valid in law, without petition to, or order of, any Court of Common Pleas for making such deed ; any law, usage, or custom, to the contrary notwithstanding. 40 Deeds

Passed October 28, 1788.

## VI.

AN ACT concerning the sale of real estates made by the sheriff' 1825  
in and for New-Castle county.

Section 1. It shall be the duty of the sheriffs of New-Castle county to make all sales of real estate either on the premises to be sold, or at some public house as near as may be in the same or the adjoining hundred to said premises, any law usage or custom to the contrary notwithstanding. 41 Sale in N. Castle county on or near the premises

Passed at Dover, February 4, 1825.

## VII.

AN ACT for the security of purchasers of real estate, sold in execution of judgments or decrees. 1827

Section 1. In any case of sale of lands, tenements or hereditaments by order of the Chancellor or by virtue of any execution issued out of either of the courts of this State, if the defendant or 42 Writ of possession on Sheriff's sale of lands

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 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 show 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.

43 hearing

41 stay of execution—especially in case of tenant

45 When application for such writ

46 Form of writ

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 neighborhood, 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.

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

(Seal of) We command, you that without delay you cause ———  
(Court.) ——— 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.]

If there be a legal exception to the sheriff, the writ may be directed 47 Varied  
 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 Chan-*  
*cancellor made in our Court of Chancery at \_\_\_\_\_, in a certain cause*  
*between \_\_\_\_\_ complainant, and \_\_\_\_\_ defendant;* and  
 the writ may be adapted to the case, in which it shall be awarded,  
 by any requisite variation from the said form. Any thing herein 48 Ejectment  
 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 pur-  
 suant 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: 49 Rent of  
 premises sold  
 if such premises be in possession of a tenant under rent, such rent  
 shall be apportioned according to the time; the proportion for the  
 time the rent has been growing due to the day of sale being pay-  
 able 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 as-  
 sumpsit 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 reserv-  
 ed, but may demand and recover a fair rent: if the crop be sold  
 separately from the soil the demand of the purchaser shall propor-  
 tionally abate.

Sect. 2. In any case of sale whether made heretofore or to be 50 Deed—of-  
 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, tenements or heredita-  
 ments so sold or a just part or proportion thereof: and such court



## EXECUTION.

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.

51 recorded

52 Liberari  
Facias

*Passed at Dover, January 29, 1827.*

## VIII.

1819 A SUPPLEMENT to the Act entitled "*An Act for the more easy and speedy recovery of small debts.*"

53 Officersel-  
ling goods on  
execution not  
to purchase

54 penalty

Section 8. It shall not be lawful, at any sale, of goods or chattels made in pursuance of any law of this State by any sheriff or sheriffs, constable or constables or the deputies of either making such sale, either by himself or themselves directly or indirectly by the agency of any other person for the use or benefit of such sheriff or sheriffs, constable or constables or the deputies of either, to purchase or bid off any property or articles of property whatsoever: and for an offence against this provision, any sheriff or sheriffs, constable or constables or the deputy of either so offending in the premises, on due proof thereof being made, shall forfeit and pay a sum equal to the value of such goods or property so bought, with costs of suit, to be recovered as debts of a like amount are by the laws of this State recoverable the one half to any person, who will sue for the same, and the other half to and for the use of the State.

*Passed at Dover, February 10, 1819.*

## IX.

AN ACT to secure the punctual payment of public monies, and for 1816;  
other purposes.

Section 2. If any sheriff within this State shall, after the passing of this Act, neglect or refuse to pay to the several suitors and parties interested therein, their lawful agents, factors or assigns or to the several officers, all and every sum or sums of money to them respectively belonging, which shall come to his hands or which it shall be his duty to collect and receive, at the time when the same is properly payable, he shall, from and after the time when the same is payable as aforesaid, be chargeable with, and pay to the said several suitors and parties interested therein, their lawful agents, factors and assigns and to the several officers aforesaid in addition to the sum and sums of money, which shall come to his hands or which it shall be his duty to collect and receive as aforesaid, at the rate of twenty per centum per annum thereon to be computed from the time, when the same is properly payable as aforesaid, until the same shall be paid and discharged.

55 Sheriff not paying over money

56 penalty

Sect. 3. *Provided always*, that where two or more persons shall claim any money so to be collected by any sheriff within this State, or where the person, to whom the money is payable, resides out of the bailiwick of such officer and has no lawful attorney within the same, then it shall be lawful for the said sheriff to bring the money into the court, from which the process issued under which the money was collected, there to remain subject to the order of the court; and such payment into court shall excuse the said sheriff from the operation of this Act.

57 proceeding in case of dispute—or creditor out of the State

*Passed at Dover, January 31, 1816.*

## X.

AN ACT to prevent the issuing the writ of *capias ad satisfaciendum* 1785  
in certain cases.

Whereas personal liberty is one of the greatest privileges, that freemen enjoy, and ought not to be violated in any case whatsoever, unless where substantial justice absolutely requires it: And because it has been represented to this General Assembly, that the writ or process commonly called or known by the appellation of *capias ad satisfaciendum* has been made use of to oppressive purposes by confining the persons of debtors, when they have had sufficient real or personal estate to pay and satisfy the demands of their creditors: For remedy whereof;—

Section 2. No plaintiff or plaintiffs shall sue out or obtain a *capias ad satisfaciendum* upon any judgment or judgments entered or obtained in any court or courts within this State against any defendant or defendants being inhabitants of this State, until one or more writ or writs of *feri facias*, on the said judgments shall have issued, and it shall appear upon the sheriff's return on the said writ or writs of *feri facias*, that the defendant or defendants in the

58 Ca. Sa. not to be issued unless, &c.

said writ or writs named have not either real or personal property within the county sufficient to pay or satisfy such debt or debts, for which the said writ or writs of *feri facias* have issued ; or until the said plaintiff or plaintiff's obtaining such judgment or judgments shall swear or affirm, *That he or she verily believes, that the defendant or defendants hath or have not sufficient personal or real estate to satisfy such debt, interest and costs contained in such judgment or judgments* : which oath or affirmation may be administered by the prothonotary of the court, where such judgment or judgments has or have been rendered and filed by him, previous to the issuing such writ or writs *capias ad satisfaciendum*.

59 issued  
otherwise  
void

Sect. 3. If any plaintiff or plaintiffs, his or their counsel or attorney shall issue or cause to be issued the said writ of *capias ad satisfaciendum* upon any judgment or judgments entered or obtained as aforesaid before the issuing of one or more writs of *feri facias* upon such judgment or judgments or oath or affirmation made and filed as aforesaid, the said writ of *capias ad satisfaciendum* shall be void and of no effect ; any custom or law of this State to the contrary notwithstanding : And the plaintiff or plaintiffs obtaining such writs shall be liable to all costs in issuing and executing the same.

*Passed June 4, 1785.*

## XI.

1829

### AN ACT concerning executions.

60 Death or  
escape of par-  
ty in execut'n

Section 1. 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.

61 eviction  
of tenant by  
elegit

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 show 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.

62 Remedy  
for escape on  
execution

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 indorsed, 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.

Sect. 2. A writ of scire facias may be sued upon a judgment in a personal or mixed action as well as upon a judgment 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.

63 on judgments and recognizances

64 by and against what parties

*Passed at Dover, February 11, 1829.*

—o—

## EXECUTORS AND ADMINISTRATORS.

*AN ACT concerning the probate of wills and the administration of the personal estate of deceased persons.* 1829

Section 1. 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 chattels, 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.

1 Will—where proved

2 recorded & 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 notice of the time and place of taking the proof, as he shall deem reasonable.

3 Notice of proving

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 can-

4 Review

5 limitation  
of review

not 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.

6 Caveat

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.

7 Issues to be  
tried by 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.

8 Letters  
Testamentary  
(21)

Sect. 2. 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.

9 Administra-  
tion with Will  
annexed

10 person not  
named in Let-  
ters, no au-  
thority, &c. as  
Ex'r

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.

11 Adminis-  
tration during  
minority

12 restriction  
on granting  
Letters

13 married  
woman

14 Adminis-  
tration

Letters testamentary may be granted to a married woman.

Sect. 3. 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 de-

ceased at the time of his death, or if the deceased, at the time of his death had no place 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.

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 persons, 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.

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.

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.

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.

Sect. 4. 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.

Sect. 5. 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.

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.

Sect. 6. 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

15 to whom  
(21)

16 Married  
woman

17 on estate  
of non-resi-  
dent

18 d. b. n  
(37)

19 Ex'r of  
Ex'r no repre-  
sentative

20 Adm'n dur-  
ing litigation  
or absence

21 incapacity

22 Power to  
remove Ex'r  
& Adm'r  
(56)

23 On discov-  
ery of Will,  
&c. Adm'r re-  
moved

24 but act-  
valid

25 Bond  
(27)

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 :

- 26 Condition "The condition of this obligation is such, that if the above named  
(28. 31.) ——— [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 chattels of said deceased, whereof the said ——— † shall have knowledge, and the same with a true and perfect list of all and singular the 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 chattels, 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 chattels, rights and credits, after all just demands and charges, to which the same goods and chattels, 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 chattels, 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."
- (37. 40.)

27 Several  
Ex'rs or Ad-  
min'rs.— bond

28 Several  
joining in  
bond  
Condition va-  
ried

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 a 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 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 preceding 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."*

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.

29 bond-husband & wife

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.

30 Docket entry

Payment of, and assent to, legacies as well as payment 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.

31 Legacies within the 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 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 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.

32 Liability of Reg'r if letters without bond

33 Further security

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.

34 bond preserved

Sect. 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 on appeal from him.

35 Appeal

36 Act of Register, how questioned

Sect. 8. 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

37 goods unadministered



- 33 commis-      made. When in the course of the administration of the estate  
sions              of a deceased person part thereof passes from one executor or ad-  
                     ministrator to another, commissions shall not be twice allowed  
                     thereupon; but a reasonable allowance for commissions may be  
39 apporportion-      the allowance may be made to the executor or administrator, who  
ment                  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 mat-  
40 Acts of re-      til the first allowance is annulled. Any act done by an execu-  
moved or de-      tor or administrator in the due course of administration and any  
ceased Ex'rs,      payment made by an executor or administrator in or toward sa-  
&c.                  tisfaction of a legacy or distributive share shall be available, un-  
                     til 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.

Sect. 9. Every executor and administrator shall take an oath or affirmation according to the following form:

- 41 Oath              *I—do solemnly swear (or affirm) that I will diligently  
                     and faithfully perform all the duties incumbent upon me as (execu-  
                     tor or administrator or as the case may be) of ———deceased*
- 42 Appraisers      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—*  
43 Their oath      *—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 per-  
                     form my duty as an appraiser of said goods and chattels, faithfully  
                     in all things: So help me God (or so I do solemnly affirm.)*

- 44 Assets—      Estates held by the deceased in lands, tenements or heredita-  
Inventory      ments, for the life of another, shall be chattels; and such estates,  
(53)              estates by elegit or for years, the crop of the deceased growing or  
                     begun, unless on lands devised by him, slaves, terms of servants or  
                     apprentices transmissible according to law, bank and other stock,  
(Apprentices,      money of the deceased, whether in hand or deposited in bank, and all  
&c. 18)              the goods and chattels of the deceased, shall be assets and shall be  
                     included in the inventory; except the clothes of the widow and or-  
                     naments proper to her station, the clothing of the family and of the  
                     deceased, and the family stores laid in before the death of the de-  
                     ceased, 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 indorsed or annexed to the inventory, according to the following form: *We the subscribers, appointed by the Register appraisers of the goods and chat-*

- 45 Apprais-      ers' certificate

tels 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.

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. 46 debts due from ex'r or adm'r

There shall be indorsed 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 : 47 Affidavit of ex'r or adm'r

— county, ss. — maketh solemn oath (or affirmation) and saith, that he hath made diligent inquiry concerning the goods, chattles and money of — deceased; and that this inventory doth contain all the goods, chattles and money of the said —, which have come to the possession or knowledge of this deponent (or affirmant.) 48 to 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 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. 49 to list of debts

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. 50 Oaths 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 chattels 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 shall apply, when witnesses are examined before the Register touching any account. 51 Inventory or list set aside

The inventory of the goods and chattels and the list of debts 52 Appeal

53 on hearing before Reg'r, testimony written

& list delivered in 6 months

55 or attachment

56 one of several ex'rs &c. refusing—  
removed  
(22)

57 Ex'r or adm'r may finish growing crops

58 Additional inventory or list

59 Commission to take depositions

60 Survivorship of cause of action to and against ex'rs & adm'rs  
(Constitution 76)

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, 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 chattels 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.

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.

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.

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.

Sect. 10. 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.

Sect. 11. 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.

61 Contract joint & several, unless

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 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.

62 Survivors of action

63 Writ of Error

64 Judgment to succeeding ex'or, &c.

65 admitted plaintiff on motion

66 Costs

67 Costs ag't ex'rs, &c. not allowed in acc'ts, unless

68 Judgment ag't ex'r, &c. when not conclusive of assets

69 Requisites to its binding real estate

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; although 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.

(104)

Sect. 12. 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 the deceased; third, wages of servants and laborers employed in household affairs, or in the cultivation of a farm; but no servant or laborer 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

70 Order of payment of debts

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 merchandise; ninth, other demands.

71 Paym't of  
debt of inferior  
order, with-  
out notice of  
superior  
2 Bac. Abr.  
ex'rs & adm'rs  
1. 2. 434, 435,  
& n. by Gwil-  
lin

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.

72 Notice  
when presu-  
med

Such notice need not be by action. 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.

73 rents and  
profits of real  
estate

Sect. 13. 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 administrator 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.

74 repairs

An executor or administrator in the possession of real estate shall with the rents and profits maintain the premises in tenantable repair.

75 Probate of  
debts before  
payment

Sect. 14. 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 towards 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.

76 Non-suit  
for want of a  
probate  
77 Sect. before

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.

If affidavit, as required by this section, be not produced in an action against an executor or administrator 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 show cause, which shall not 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.

exhibiting  
probate, costs  
disallowed

78 before  
whom made

False swea-  
ring

Sect. 15. 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.

79 Accounts  
of ex'r or ad-  
min'r yearly

80 attachm't  
for neglect

81 when dis-  
pensed with

Sect. 16. 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 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

82 Distribu-  
tion of residue

83 right of  
husband or  
widow

residue, or if there be no kin to the intestate, to the whole of such residue.

84 Manner of  
distribution  
85 representa-  
tion

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.

86 Kin—com-  
putation  
(Intestate's  
real estate 7)

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.

87 Will—re-  
sidue not dis-  
posed of

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.

88 One year  
allowed ex'r  
or adm'r to  
settle estate

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.

89 any part of  
estate carry-  
ing interest

90 Specific le-  
gacies, when  
payable

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.

92 Refunding  
bond

93 Assumpsit  
for legacy or  
distributive  
share

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 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.

Not when trust

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.

94 Legacy not satisfact'n of debt

Sect. 17. 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 payment 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.

95 Order to publish grant of let. test. or adm'n

96 Proof of such notice

97 After year paym't of legacy or distributive share-outstanding debt not known-good

Sect. 18. 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

98 Power of ex'r, &c. to convey in execution of contract of dec'd

99 proceedings

100 order therefor



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.

101 When  
lands in differ-  
ent counties

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 accepted; proceeding under this section shall not be necessary.

102 Non-suit

If a suit be brought against the true intent of this section, the court may in their discretion enter judgment of nonsuit.

103 Process  
ag't an ex'r or  
adm'r shall be  
Summons

104 proceed-  
ings on judg-  
m't by default

Sect. 19. 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.

105 Letters  
granted in a-  
nother State

Sect. 20. 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 administer 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 reversed or set aside as irregu-

lar 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.

Sect. 21. The Register shall have power to issue process of citation, subpoena 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, subpoena 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.

106 Process of Register

Sect. 22. 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.

107 Orphans Court

*Passed at Dover, February 16, 1829.*

## II.

### *AN ACT concerning sales of the real estate of deceased persons by 1829 executors or administrators for payment of debts.*

Section 1. 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 premises 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 non-resident, 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 separate 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

108 Order to sell real estate of dec'd to pay debts

109 Notice of petition

110 Acct of estate & debts

- 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 seem 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 hereditaments of an intestate, shall not be a bar to the making of an order for sale thereof as aforesaid.
- 111 Inventory & appraisem't 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.
- 112 Order (126, 132)
- 113 partition no bar to order
- 114 Any one paying proportion of debts
- 115 Contribution
- 116 Sale by public auction 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.
- 117 Return 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
- 118 Deed
- 119 Adm'r d. b. n. may complete the sale

the direction and by virtue of an 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.

120 Deed to heirs or assigns of purchaser

Sect. 2. 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 dependent upon a contingency; but such sale or deed as aforesaid shall not divest, impair or affect 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.

121 Effect of sale

122 incumbrances cleared

123 not cleared

Sect. 3. 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 deceased person according to the following order: that is to say:—

124 Purchase money applied

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 recognizances and mortgages entered into, or executed, by said deceased person, with condition for the payment of money or interest absolutely and not dependent 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 and 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.

debts of first class

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.

liens only  
within these  
classes

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 there 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.

125 Directions

The said Orphans Court upon the petition of any executor, or administrator shall give directions for the payment or disposal of said surplus.

126 Bond

Sect. 4. Every executor or administrator, before proceeding to execute an order made for the sale of any lands, 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.*

127 Adm'r d.  
b. n. receiv-  
ing purchase  
money

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 pay-

ment shall not be made and said sale shall not be approved, until the said administrator 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, although 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.

128 bond

129 Purchase money, when refunded

Sect. 5. 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.

130 Charges taxed by Orphans Court

131 Account

Sect. 6. 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.

132 Discretion of court

Sect. 7. 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.

133 Appeal

Sect. 8. 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.

134 Power in Will to sell land, &amp;c.

*Passed at Dover, February 3, 1829.*

## III.

1825 **AN ACT** concerning the acknowledgement and recording of acquittances to executors, administrators and guardians, [and for limiting the time of excepting to their accounts.]

135 Releases,  
&c to ex'rs,  
adm'rs, guar-  
dians—ac-  
knowledge  
& recorded

Section 1. Any release, acquittance or receipt being executed under hand and seal by any legatee, next of kin or interested person of full age to any executor, administrator or guardian of or concerning any sum or sums of money due by virtue of any last will and testament or upon any account of such executor, administrator or guardian passed before the Register for the probate of wills and granting letters of administration in and for either of the counties of this State and being acknowledged by the person executing such release, acquittance or receipt, before the Chancellor, any Judge of the State, or two Justices of the Peace of either of the counties of this State setting together shall upon being delivered to the said Register, in whose office such will or account shall be recorded or filed, be by him recorded in a well bound book to be kept for that purpose, and such record or a copy thereof by him duly certified under his hand and seal of office shall be good and competent evidence to all intents and purposes.

136 Acknow-  
ledgment

Sect. 2. The acknowledgement before the Justices of the Peace shall be certified according to the following form, viz;—

*county ss. Acknowledged by  
to be his [or her or their] voluntary act or  
deed before us two of the Justices of the Peace for said county the  
day of                    in the year                    as witness our hands:—*

137 by non-  
resident

Sect. 3. A release, acquittance or receipt executed as aforesaid by a person not residing in the State of Delaware, may be acknowledged before a Judge or before a chief magistrate of a city town or county; and the acknowledgment may be certified under the hand of such Judge and seal of his court or of such magistrate and the public seal of the city, town or county; and a release, acquittance or receipt being so made and acknowledged shall be recorded; and the record or a copy thereof shall be evidence as aforesaid.

138 Indexes  
to record

Sect. 4. The Register for the probate of wills and granting letters of administration in and for each of the counties of this State shall make and keep to the book, in which such releases, acquittances and receipts shall be recorded as aforesaid, alphabetical indexes direct and reversed in the same manner, as such indexes are kept by the Recorder of deeds.

*Passed at Dover, February 9, 1825.*

—o—

## FAIRS.

1785

**AN ACT** for the suppression of public marts or fairs.

1 Fairs

Whereas there are divers fairs held at several places in the coun-

ties of New-Castle and Kent within this State; some of them by ancient charters or letters patent granted by the then Proprietaries and Governors of this State, and others under subsisting laws of this State. *And whereas* it appears to this General Assembly, that the freeholders and inhabitants of the respective places, in which such fairs have been held by virtue of such charters, letters patent and subsisting laws as aforesaid, have under color and pretext of such charters, letters patent and subsisting laws held fairs for very different purposes from those mentioned in such charters, letters patent and subsisting laws, and have misused the franchises and liberty thereby granted to them by permitting strangers, as well as many of the inhabitants of this State to set up and keep booths and stalls at the holding of the said fairs for the sale of strong liquors and other superfluities; by reason whereof, many imprudent persons, more especially servants and young people, are tempted and induced to purchase those liquors and to use them to excess, and to lay out large sums of money for many articles, that are of no real use or benefit; quarrels are excited; and almost every species of vice and immorality is practised, to the scandal of religion and the grief and annoyance of the virtuous part of the community. *And whereas* the original purpose and intention of holding fairs has long since been done away by the numerous stores, that are kept in every part of the country, and the ready market there is for all the produce of the State and a respectable number of the inhabitants of the said counties and places, where such fairs are held, having by their petitions to the General Assembly humbly prayed, that a law may be passed for the repeal of such charters, letters patent or laws of this State and for relief in the premises:

Sect. 2. The said charters, letters patent and laws of this State and every clause, matter and thing therein contained, so far as relates to the holding of such fairs, be and are hereby repealed, made null and void to all intents and purposes whatsoever: Any thing in the said charters, letters patent or laws aforesaid contained to the contrary in any wise notwithstanding; and no fair or fairs shall be held or kept in virtue thereof at any time hereafter at any place or places in either of the said counties or elsewhere within this State by the inhabitants thereof or any other person or persons whatsoever.

2 All charters  
&c. for, repealed

Sect. 3. If any person or persons within this State shall presume to hold any fair or fairs or to keep any booth or stall for the selling of strong liquors, he, she or they so offending shall forfeit and pay, for every such offence, the sum of Ten Pounds current money to be recovered with costs, upon conviction of the party offending by confession or otherwise, in any Court of Quarter Sessions, where such offence may be committed within this State.

3 Penalty for  
holding

*Passed June 4, 1785.*



## FEES.

## I.

1826

## AN ACT for regulating fees.

Section 1. The officers and persons hereinafter mentioned may demand and receive fees for services, as hereinafter prescribed; that is to say :

1 Fees of  
Secretary of  
State

*The Secretary of State*

For issuing a pardon, reprieve or remission under the great seal, two dollars ;

For every certificate in private cases, if under the great seal, one dollar, if under seal of office, fifty cents ;

For copying, the rate of one cent for every twelve words :

2 Judges and  
Chancellor

*The Judges and Chancellor*

For taking and certifying the acknowledgment (whether of one or more parties) of a release, acquittance or receipt of money due by will or upon executor's, administrator's or guardian's account, fifty cents ;

For taking and certifying the acknowledgment (whether of one or more parties) of a deed, other than described in the foregoing item, sixty cents :

3 Justices of  
the Peace

*Justices of the Peace*

For taking and certifying the acknowledgment (whether of one or more parties) of a release, acquittance or receipt of money due by will or upon executor's, administrator's or guardian's account, to each Justice, thirty cents ;

For dispensing marriage license and taking and returning bond, to be paid by the party in addition to the fee to the State, thirty three cents ;

For issuing warrant or mittimus on behalf of the State, twenty cents ;

For taking and certifying a recognizance of surety of the peace or good behavior or in any case of a criminal nature, whether there be one or more recognizers therein, twenty cents ;

For issuing subpoenas for witnesses for the State or defendant in a case of a criminal nature, to wit, for the first subpoena for either, ten cents, for subsequent do. do. five cents ; all the witnesses, named for the same party before issuing the subpoena shall be included therein ;

For entering judgment of acquittal or conviction in a case of submission on complaint for assault or battery, ten cents ;

In a proceeding against a slave to trial and judgment (of acquittal or conviction) upon a charge of a criminal nature, for all services when before two Justices, to each Justice one dollar, when before one Justice, fifty cents ;

For issuing mittimus for committing runaway servant or slave, fifty cents ;

In a case of landlord against tenant for holding over fees as follows, viz. for issuing warrant of summons, to each Justice, twenty-five cents, for do. subpoena for witnesses, including all named for the same party, ten cents. (such subpoena issued by one of the Justices and under his hand and seal shall be good), for issuing attachment against a freeholder or a witness, to each Jus-

tice, twenty-five cents to be paid by the freeholder or the witness, unless excused for good cause ; for drawing record, to each Justice, twenty-five cents, for attendance during the hearing and finding, to each Justice, one dollar, for issuing warrant for delivering possession and levying costs and damages, to each Justice, twenty-five cents ;

In a proceeding for forcible entry and detainer, the same fees as in a case of landlord vs. tenant for like services ;

In a proceeding for a penalty, the same fees as under the Act providing for the recovery of small debts, for like services, unless the law imposing the penalty provide otherwise. (Justices of the Peace 180)

*The Attorney General*

For the whole prosecution in every capital case, ten dollars ;

For drawing an indictment for a capital crime, not found, two dollars and forty cents ; 4 Attorney General

For every attachment issued upon his motion, in the Court of Oyer and Terminer or Court of Quarter Sessions, one dollar ;

For drawing every bill of indictment, in cases not capital, if found, two dollars and forty cents ; if not found, one dollar and twenty cents.

*The Recorder of Deeds (a)*

For recording every obligation given by an officer for performance of the duties of his office and examining and certifying, including all services, fifty cents ; 5 Recorder of Deeds

For recording and comparing deeds and writings, also for copying, the rate of one cent for every twelve words ;

For every certificate under his hand and seal of office, thirty cents ;

For entering satisfaction of mortgage, fifty cents ;

For each list of mortgages furnished under his hand and seal to sheriff to enable him to hold inquisition on lands taken in execution or to apply proceeds of sale of lands sold by the sheriff, when such list is actually furnished, thirty-seven and one half cents ;

*The Sheriff of each county*

6 Sheriff

For serving writ of summons, scire facias, replevin, dower, petition, subpoena ad respondendum, injunction, estrepement, capias ad respondendum, attachment for attaching property, process of citation, declaration and notice in ejectment, attachment for contempt, capias on indictment or presentment, or any process of arrest in a civil or criminal case, and making due return, seventy-five cents ; and if served on more than one, except the case of husband and wife, or if property of more than one be attached, an additional fee, for each after the first, of fifty cents ; serving writs

For bail bond, bond from either party in replevin or bond for securing rent, twenty-five cents ; bail bond

For serving attachment upon garnishee and making return, to attachment wit, for each garnishee summoned, thirteen cents ;

For serving subpoena to give evidence or to bring papers and making return, to wit, for each person summoned, thirteen cents ; subpoena

For serving writ of capias ad satisfaciendum and making return, ca. sa.

(a) The Recorder of deeds in Sussex county for every day he attends Board of Property is to be allowed one dollar to be paid out of money arising from Land Office. By Act of Jan. 25, 1799.

to wit, for each person arrested, one dollar; and on this writ the sheriff shall receive the sum thereupon due, with the costs, if offered; and he shall be allowed, for receiving and paying, fees at the rate of two cents per dollar in addition to the fee for serving the writ:

- ha. fa poss. For serving and making return of writ of habere facias possessionem or writ in the nature thereof one dollar; or if there be several parcels possessed by different persons, one dollar for each parcel so possessed;
- 7 Mileage For mileage, on serving each writ or process before mentioned, the rate of three cents per mile, out and in, to be computed from the place of return to the place of service, or if served on more than one, then the mileage to be computed for the distance necessary to be travelled in setting out from the place of return, and so proceeding, as to pass by each place of service and return to the place of return by the most direct route; and if it becomes necessary to issue a second or more subpoenas for witnesses for a party in the same cause, the same compensation of mileage shall be made in relation to all such subsequent subpoenas.
- 8 No mileage inquiry No mileage shall be allowed for the services hereinafter mentioned; For serving and making return of writ of inquiry of damages, or other writ or commission of inquiry, three dollars;
- elegit, partition, dower. (116) For serving and making return of writ of elegit, writ of liberari facias, writ de partitione facienda, or writ of habere facias seisinam in dower, four dollars;
- And for attendance on the premises on making partition or laying off dower, for each day, after the first, one dollar;
- For serving and making return of writ pro retorno habendo, two dollars;
- sequestration For serving and making return of writ of sequestration, two dollars;
- 9 Levying execution on goods (116) For levying an execution on goods and chattels, making inventory, causing appraisement and making return; if the sum due upon the execution, exclusive of costs, shall not exceed four hundred dollars, three dollars; but if the sum so due shall exceed four hundred dollars, four dollars;
- 10 advertising goods For advertising goods and chattels for sale, for the first time, sixty cents; for a second time and a third time if necessary, for each time, thirty-seven and one half cents; but no further fee for advertising shall be allowed, whether upon the same or upon successive writs in the same case; and no fee for advertising shall be allowed, unless advertisements shall have been posted and delivered or left according to law;
- 11 restriction
- 12 Notice of sale of goods (117) Public notice of the sale of goods and chattels and of the day, hour and place thereof, shall be given by advertisements posted at least ten days before the day of sale in five or more of the most public and suitable places, two of which, at least, shall be in the hundred in which is the defendant's place of abode, if he have a known place of abode in the county; and one such advertisement shall, ten days at least before the day of sale, be delivered to the defendant or left at his usual place of abode, if he have a known place of abode within the county;
- 13 Time after Goods and chattels taken in execution shall not be sold until the

expiration of thirty days after the levy thereon and notice thereof <sup>levy before</sup> to the defendant or defendants ; to the end that any person <sup>sale</sup> concerned may relieve the same by payment of the money due upon the execution ; unless the court, out of which the execution shall have issued, shall in term time, or a judge thereof shall in vacation, upon application of the plaintiff or of the officer holding the execution, and on its being made satisfactorily to appear that any such goods or chattels are of a perishable nature or will create a charge by keeping, order such goods and chattels to be sold sooner ; and such order shall direct such notice to be given of the sale as shall be deemed reasonable under the circumstances ;

For selling goods and chattels on execution, the rate of three cents <sup>14 dollarage</sup> per dollar on the money made by the sale and legally applied to <sup>on goods</sup> execution or to landlord's rent ; but the sheriff shall not have dollarage on money applied to an execution in the hands of another officer or to rent distrained for by another officer ; if an execution be levied on goods or chattels and settled without a sale after the expiration of thirty days from the levy and notice as aforesaid, the sheriff shall be entitled to dollarage ; but if settled before the expiration of said thirty days, dollarage shall not be allowed ; the item of dollarage shall not accrue and shall not be indorsed or returned, until sale or settlement after the expiration of thirty days as aforesaid ;

For levying execution upon lands and tenements, holding inquiry <sup>15 levy on</sup> and making return, two dollars ; <sup>lands</sup>

For holding inquiry and returning inquisition, under rule of court, <sup>16 inquiry</sup> two dollars ; but this fee shall not be demanded or paid, if the <sup>under rule</sup> debt, interest and costs due on such execution, be made out of <sup>(116)</sup> the goods and chattels taken in execution on such writ or be paid by the defendant in the execution before the day fixed in such execution for the return thereof ;

For advertising sale of lands and tenements, for first time, one <sup>17 advertising</sup> dollar ; for a second time, if necessary, fifty cents ; but no <sup>lands</sup> further fee for advertising shall be allowed, whether on the same or on successive writs in the same case ; and no fee for advertising shall be charged, unless advertisements shall have been set up according to law ;

For selling lands and tenements on execution, the rate of two cents <sup>18 dollarage</sup> per dollar on the money made by the sale and applied to an <sup>on lands</sup> execution levied on the premises ; if part or the whole of the money made be applied to a judgment or lien, whereon no execution shall have issued and been levied on the premises, the rate of one cent per dollar on the money so applied ; the item of dollarage shall not accrue nor be indorsed, (in case of levy on lands and tenements) until sale made ;

For advertising and for selling, under an order of court, goods, <sup>19 Selling</sup> chattels, lands or tenements attached, the same fees as for like <sup>goods, land-</sup> services on execution ; and for selling lands or tenements, in <sup>under order</sup> execution of a decree of the Chancellor by order of the Court of Chancery, the same fees as for selling on execution ;

No dollarage shall be charged on any overplus of money to be <sup>20 no dollar-</sup> funded ; <sup>age on over-</sup>

For making return of sale on a writ of ven. ex. or of lev. fac. one <sup>21 return of</sup> dollar and thirty-three cents ; <sup>sale</sup>

- 22 acknow- For acknowledging deed for lands, and tenements; sold on execu-  
ledging deeds tion or under order of court, one dollar;  
For return of writ of entry or writ of seisin in common recovery,  
each, thirty-three cents;
- 23 delivering For delivering to surveyors, appointed to lay down pretensions in  
to surveyors ejectment or other action, warrant, and giving notice to the  
warrants, &c. parties or their attorneys of the time of executing the same, one  
dollar and fifty cents;
- 24 attendance For each days attendance on the survey made under such warrant,  
on land one dollar;  
For each days attendance with the jurors, on view granted, one  
dollar;  
For every return of non est inventus, nulla bona, or nihil habet,  
twenty cents;  
For assigning bail bond, or bond in replevin, twenty-five cents;  
For summoning a special jury and making return, two dollars;  
25 special For serving and making return of warrant of summons, in case  
jury of landlord against tenant for holding over, two dollars;  
26 landlord vs For each days attendance during the hearing of such case one  
tenant dollar;  
For serving and making return of the warrant for delivering  
possession and levying costs and damages, in such case, one dol-  
lar; and the rate of three cents per dollar on the damages and  
costs levied;  
And in forcible entry and detainer like fees for like services;
- 27 criminal For levying fines and forfeitures, the rate of two cents per dol-  
cases lar;  
For every commitment to prison, in a criminal case, or by order  
of court, fifty-three cents; but no allowance shall be made on a  
prisoner's being carried into court, or before a judge or magis-  
trate, and remanded;  
For executing every sentence inflicting corporal punishment, one  
dollar and fifty cents;  
For executing sentence of death, sixteen dollars;
- 28 duty of The sheriff shall indorse and return upon every writ, process or  
Sheriff to in- copy of an order of court directed to or executed by him, his fees  
dorse fees— for all services under the same; specifying particularly, if such  
each item fees consist of more than one item, every item thereof; and he  
(117) shall not charge upon any such writ, process or order a fee for  
any service not herein expressly provided for or a greater fee than  
is herein expressly allowed; and he shall not indorse or return a  
fee for any service not performed at the time of the return being  
in fact made; and if a sheriff shall fail to indorse and return up-  
on any writ, process or copy of an order his fees, or to specify  
the items thereof according to the foregoing requirement; or if  
he shall include in such indorsement and return any fee for any  
service not performed at the time of the return being made; he  
shall forfeit all his fees upon such writ process or order and the  
same shall be disallowed and stricken from the costs in the case:  
if money be applied to an execution or if it be settled after the  
return thereof and when no writ thereupon is in the sheriff's  
hands, the sheriff receiving dollarage shall certify the same un-  
der his hand to the prothonotary or clerk having such execution
- 29 failure
- forfeiture
- 30 dollarage  
rec'd after re-

in his office, who shall annex such certificate to the execution ; <sup>turn of process</sup> and if a sheriff shall neglect to certify, as afore required, for the space of thirty days after receiving the dollarage, his right there-to shall be forfeited ; and the person or persons, from whom or out of whose money the same was received or retained, shall have right to demand and recover the same as money had and received to his, her or their use before a Justice of the Peace, if the sum do not exceed fifty dollars, or if exceeding that sum, in the Supreme Court or Court of Common Pleas, with costs of suit like any debt of the same sum ;

If the sheriff shall incur expense in keeping goods or chattels taken upon execution or attachment, the court shall, upon application, consider the circumstances, and may make such allowance, as they shall deem just ; also in case of service of a writ of sequestration, the Chancellor may allow for extra services beyond the fee provided ; <sup>31 expenses in keeping goods, &c.</sup>

There shall be an additional fee or charge for appraisers in case of a levy on goods and chattels, or for freeholders making the inquisition in case of a levy on lands and tenements, of twenty-five cents to be paid to each appraiser, or freeholder ; whenever such fee shall be paid by the sheriff : <sup>32 appraisers</sup>

*Fees for certain public services to be paid by the county, to wit :—*  
For proclamation of holding Court of Oyer and Terminer, two dollars : <sup>33 fees payable by county</sup>

For summoning a grand jury or a petit jury and returning panel, four dollars :

For serving writ for convening General Assembly, upon the members for his county, three dollars :

For all services in respect to a general or special election, a reasonable compensation to be fixed by the Levy Court, not to exceed forty dollars :

For each days attendance upon the Court of Chancery, one dollar and fifty cents ; and it shall be the duty of every sheriff to attend the Court of Chancery, during every term thereof in his county, and his refusal or neglect to do so shall be deemed a contempt of said court ; <sup>34 attendance C. of Chancery</sup>

The sheriff attending the High Court of Errors and Appeals ; <sup>35 H. C. Err. & Appeal</sup>  
For every days attendance, one dollar and fifty cents, to be paid by the State.

*The Clerk of High Court of Errors and Appeals*

For issuing writ of error, citation, certiorari, attachment, process or any judicial writ, one dollar ; <sup>36 Clerk of H. C. of Err & Appeals</sup>

For entering every appeal from Chancery and entering and indorsing the time of receiving record, one dollar.

For entering every appeal from the Common Pleas in case of petition for freedom, fifty cents ;

For the filing and safe keeping of every record, twenty-five cents ;

For every continuance, fifty cents ;

For entering every decree, final or interlocutory, or judgment, one dollar ;

For certificate under hand and seal of office, fifty cents ;

For copying, the rate of one cent for every twelve words ;

37 Cl'k of Su.  
Cl. & Proth'y  
of Com. Pleas  
38 in suits

*The Clerk of the Supreme Court, or the Prothonotary of the Court of Common Pleas*

For issuing writ of summons, scire facias, replevin, partition, dower, attachment for attaching property, capias ad respondendum, citation or other original or mesne process, one dollar; but for issuing an alias, pluries, or subsequent writ or process this fee shall not be charged; but for such alias, pluries or subsequent writ, the fee shall be fifty cents;

For filing narr in ejectment, fifty cents;

For all the entries in any action (except an amicable action, an action of debt without writ, and a suit on petition for freedom) at the first term, fifty cents, at the second term, twenty-five cents, at the third term, fifty cents and at every subsequent term, while a cause shall continue in court, twenty-five cents;

All entries made in vacation shall be deemed as made at a preceding term and within the provision respecting the fee at such term; but the following items are excepted from the foregoing general provisions; and fees may be charged on the performance of the specified services, but not till such performance, as follows, viz:—

For filing narr, twelve and one half cents, and for entering all the subsequent pleadings to issue, twelve and one half cents;

For filing interrogatories, giving written notice of such filing and making entry of such filing and notice, twenty-five cents;

For issuing commission to take depositions, fifty cents; and for copy of interrogatories annexed, the rate of one cent for every twelve words;

For receiving and filing commission returned with depositions and making entry thereof, twelve and one half cents;

For issuing warrant to lay down pretensions, fifty cents;

For issuing subpœna to give evidence, all the witnesses named at or before the issuing of a subpœna to be included therein, twenty-five cents;

For issuing subpœna to give evidence and bring papers thirty-seven and one half cents;

For drawing a list of freeholders in order to the striking of a special jury, fifty cents;

For issuing venire facias for such jury, fifty cents;

For advertising a cause for trial or argument, ten cents;

For drawing jury and all services in respect to a trial, fifty cents;

For issuing writ of inquiry of damages, fifty cents and the rate of one cent for every twelve words;

39 Reference For making and certifying in due form a copy of a rule of reference, fifty cents;

For filing report of referees, reading the same and entering judgment thereon, twenty-five cents;

For entering rule on application to set aside such report, twenty-five cents;

For entering adjudication of court on such rule, twelve and one half cents;

For entering an amicable action, including the making of all entries and filing of all papers to the time of entering the same, fifty cents;

- For entering a judgment confessed by virtue of a warrant of attorney or otherwise in an action of debt without writ, filing the narr and plea or any other writing or paper, and every service whatever of the clerk or prothonotary touching the entering of such action and judgment, one dollar ;
- For issuing writ of elegit, writ de partitione facienda, writ of habere facias, sesinam in dower, writ of liberari facias, levari facias and habere facias possessionem, one dollar and twenty-five cents ;
- For issuing attachment for contempt, one dollar ;
- For ascertaining the amount of a judgment, when according to the terms of the entry or by a rule of court the amount is to be ascertained by the clerk or prothonotary, one dollar ;
- For issuing writ of fieri facias, venditioni exponas or other judicial writ not before mentioned, seventy-five cents ;
- For filing every judicial writ returned and entering the return, six cents ; and in case of partition made or dower laid off, the return of all the proceedings shall be recorded at large in a book or books kept for that purpose exclusively, and there shall be allowed therefor the rate of one cent for every twelve words ; and for a draught, a sum to be settled by the court, but not exceeding two dollars per draught in any case, unless there be more than two several tracts of land whereof partition shall be made or dower assigned ; and in no case shall the allowance of the court exceed ten dollars ;
- For recording a writ of testatum fieri facias, fifty cents ;
- For entering a rule granted upon an application to set aside the inquisition or the sale in case of lands taken in execution, fifty cents ;
- For entering the adjudication of the court on such rule, twenty-five cents ;
- For writing and exhibiting the petition of a person imprisoned to be discharged or adjudged under insolvent laws, one dollar ;
- For issuing summons on such petition, fifty cents ;
- For entering all proceedings thereon including order of court and assignment, twenty-five cents ;
- For recording all the proceedings in the case of a discharge or adjudication according to such petition, the rate of one cent for every twelve words ;
- For writing and exhibiting petition of a person imprisoned for an order for indemnity to the county, fifty cents ;
- For issuing summons if ordered, twenty-five cents ;
- For entering order thereon, twelve and one half cents ;
- For taking and certifying recognizance pursuant to such order, whether of one or more recognizers, fifty cents ;
- For taking and certifying in due form under hand and seal of office the acknowledgment or proof of a deed or bond, fifty cents ;
- For entering and certifying in due form under hand and seal of office an order for a sheriff, an executor, or an administrator to execute a deed for conveying lands and tenements (and no fee for copy or exemplification to be added,) one dollar ;
- For entering satisfaction of a judgment, twelve and one half cents ;
- For entering, filing and recording all proceedings in common recovery, one dollar and fifty cents ;

40 D. S. B.

41 Elegit partition, &amp;c.

42 Attachm't contempt  
43 Amount ascertained

44 Fi. Fa. &amp;c.

45 Returns

46 insolvency

47 Acknowledgment, or proof of deed, &amp;c.

48 satisfact'n



- 49 search For a search upon application of a person not an attorney of the court, when no other service, to which a fee is attached, is rendered, seven cents; but a fee for a search shall not be charged among the costs in any action or proceeding, nor be added to any other fee;
- 50 Habeas corpus For issuing writ of habeas corpus, fifty cents;  
For entering all the proceedings thereupon had in court, twenty-five cents;
- 51 Minute of Judgment For a minute of a judgment containing the names of the parties, the real debt or damages, the costs, the time when interest commences, the term and the date of entry, under hand, twelve and one half cents; but if a minute of more than one judgment be required, for each, ten cents;
- 52 seal For affixing seal of office to any writing not before mentioned and touching which no fee shall be by law provided, twenty-five cents;
- 53 List of Judgments for Sheriff For list of judgments furnished sheriff to enable him to hold inquisition on lands taken in execution or to apply proceeds of sale of lands sold by the sheriff, when such list is actually furnished, seventy-five cents;
- 54 Affidavit for attachment For taking and filing every affidavit made to obtain a writ of attachment, twenty-five cents;
- 55 List of Jurors, &c. For making out at each term, a panel containing the names of the jurors and their daily attendance, calculating their allowances, and issuing certificates or drawing orders for the sum due each juror; for the whole service, three dollars;
- 56 Naturalization For filing every report of a foreigner of himself and family and declaration of his intention to become a citizen, making record thereof and issuing copy under seal, for the whole service, one dollar and fifty cents;  
For filing petition for naturalization and all other services rendered thereon, recording the same and making out copy under seal of office, one dollar and fifty cents;
- 57 Cl'k of Su. Ct. on appeal (*The following fees appertaining to the Clerk of the Supreme Court only*)  
For entering an appeal from the Register or from Orphans Court and filing the record and papers, fifty cents;  
Filing causes of appeal, twelve and one half cents;  
For an interlocutory order on such appeal, twenty-five cents;  
For entering final sentence or decree on such appeal, fifty cents, with addition of the rate of one cent for every twelve words;
- 58 Oyer and Terminer For issuing a precept for holding Court of Oyer and Terminer, one dollar;  
For issuing certiorari to remove indictment from Quarter Sessions, one dollar;  
For issuing habeas corpus for removal of a prisoner, seventy-five cents;  
For entering and filing every indictment or presentment, fifty cents;  
For issuing capias on indictment or presentment, or whenever legally required in a criminal case, one dollar;  
For taking and certifying recognizance, whether of one or more recognizors, fifty cents;  
For arraigning defendant, and making all the entries thereupon, fifty cents;

For entering nolle prosequi, fifty cents :

For all services in respect to a trial and entering verdict and judgment, one dollar :

For entering an order that a person be disposed of as servant, twenty-five cents :

For making and issuing, in due form, an exemplification of such order, twenty-five cents :

For entering the return on such order, ten cents ;

For making and issuing, in due form, an exemplification of a judgment of death, fifty cents :

For making out, at each term of the Court of Oyer and Terminer, panels containing the names of the grand and petit jurors and their daily allowance, calculating their allowances, and issuing orders and certificates for the sums due each juror, for each panel, three dollars :

(The following fees appertaining to the Prothonotary of the Com. Pleas only). 59 Proth'y of  
Com. Pleas

For filing petition for commission to mark, bound and establish lands, filing papers, entering proofs, and order, one dollar; this fee shall be allowed although the petition be rejected : commission to  
mark & bound

For issuing such commission, one dollar ;

For receiving such commission with the return, and entering order or proceeding thereupon, fifty cents :

For filing petition for freedom, fifty cents :

For taking and certifying a recognizance, in a case of such petition, whether of one or more recognizers, twenty-five cents : 60 Petition  
freedom

For taking depositions in the case of such petition, the rate of two cents for every twelve words, and an additional fee of twelve and one half cents for each deposition :

For entering a decree on such petition, twenty-five cents :

For receiving return of sale of lands for taxes and filing the same, twenty-five cents : 61 Sales for  
taxes

For entering all proceedings, and order, on such return, fifty cents :

*The Register of the Court of Chancery*

For filing bill or answer, fifty cents :

For filing affidavit for injunction and the order thereon, twenty-five cents :

For filing any other affidavit or plea or a demurrer, (but the oath or affirmation to a bill, answer or plea shall not be within this item) twelve and one half cents :

For drawing injunction-bond and taking and filing the same, one dollar ;

For issuing writ of subpœna ad respondendum, injunction or ne exeat, (each such writ to include all the defendants) one dollar ; but if in order for service on defendants in different counties more than one such writ be required, then for each subpœna, injunction or ne exeat after the first, twenty-five cents :

For issuing attachment or sequestration, one dollar :

For issuing an alias, pluries, or subsequent subpœna ad respondendum or attachment, twenty-five cents :

For filing interrogatories, giving written notice thereof and making entry of such filing and notice, twenty-five cents :

62 Reg'r in  
Chancery

- For issuing commission to take depositions, fifty cents : and the rate of one cent for every twelve words of copy of interrogatories annexed :
- For receiving and filing commission returned with depositions and publishing the same and making entry of such publication, fifty cents ; but if there be more than one commission on a side, then for each after the first, twenty-five cents :
- For issuing commission to take an answer, fifty cents :
- For every continuance, twenty-five cents :
- For taking depositions under rule of the court, the rate of two cents for every ten words and the additional fee of twelve and one half cents for each deposition :
- For filing lists of exhibits and making entry of such filing, twelve and one half cents ;
- For filing an account and entering the allowance, or other adjudication thereupon, if rendered pursuant to an order or decree, twelve and one half cents ; if rendered by a trustee of idiot or lunatic, one dollar ;
- For filing and making entry of exceptions to an account or to an answer, and of adjudication thereon, twenty-five cents ;
- For filing articles to impeach witnesses, twenty-five cents ;
- For issuing commission of inquiry ordered by the Chancellor, one dollar ;
- For entering and certifying every recognizance, whether of one or more recognizers, fifty cents ;
- For issuing subpoena to give evidence, including all the witnesses named, twenty-five cents ;
- For filing petition for partition, fifty-cents ;
- For issuing summons upon such petition, fifty-cents ;
- For entering plea or answer to such petition, twenty-five cents ;
- For issuing commission pursuant to decree for partition, one dollar ;
- For entering every final or interlocutory order or decree, twenty-five cents, and also the rate of one cent for every ten words ;
- For filing every writ or commission returned and entering the return, (except a subpoena to give evidence) if the return shall not exceed twenty words, ten cents ;
- For recording every return or certificate of proceedings or other matters, according to the direction of the Chancellor expressly given in that behalf, and not herein otherwise provided for ; if such return, certificate or matter shall exceed twenty words, ten cents ; and also the rate of one cent for every ten words ;
- For recording a draught, a sum to be settled by the Chancellor, but not exceeding two dollars for draughts in any case, unless there be more than two several tracts of land comprehended in the proceedings ;
- For affixing his seal of office to any writing not herein before mentioned and touching which no other fee shall be provided by law, twenty-five cents ;

*The Clerk of the Peace*

63 Clerk of  
Peace

81 Criminal  
Cases

- For filing every indictment or presentment and entering the same, twenty-five cents ;
- For issuing capias upon indictment or presentment, or when legally required one dollar :

- For issuing subpoena to give evidence, including all the witnesses named for a party before issuing the subpoena, twenty-five cents ;
- For issuing attachment, one dollar :
- For taking and certifying a recognizance, whether of one or more recognizors, fifty-cents :
- For respiting a recognizance, whether there be one or more recognizors therein, ten cents :
- For arraigning defendant and making the proper entries thereupon, twenty-five cents :
- For entering a submission and judgment thereon, (but in this case the item last stated shall not be charged) fifty cents :
- For drawing jury and all services in entering verdict and judgment, fifty cents :
- For entering a commitment or surrender by bail, ten cents :
- For issuing a judicial writ, seventy-five cents ;
- For entering an order to dispose of a person as a servant, twenty-five cents ;
- For issuing an exemplification of such order, twenty-five cents :
- For entering the return on such order twelve and one half cents ;
- For issuing exemplification of judgment of death, fifty cents ;
- For exhibiting petition for laying out road and entering appointment or order thereon, fifty cents ; <sup>65 Road</sup>
- For issuing such order, fifty cents ;
- For receiving return and entering order of review, in case of laying out road, and issuing such order, one dollar; and if any subsequent order in the nature of an order of review be granted, the same fee of one dollar for receiving return, entering order and issuing the same ;
- For entering final order of approval of return laying out road, twenty-five cents ; and the rate of one cent for every twelve words for recording such return ;
- For filing petition, issuing summons and all entries in case apprentice vs master, fifty cents ;
- For writing and exhibiting petition for recommendation for license to keep tavern or other public house of entertainment, one dollar ; <sup>66 Licenses</sup>
- For dispensing such license, to be paid by the party in addition to the fee to the State, fifty cents ;
- For dispensing marriage license and taking bond, to be paid by the party in addition to the fee to the State, thirty-three cents ; but the clerk shall have no fee on licenses dispensed by Justices of the Peace ;
- For dispensing licenses to retailers, the rate of two per cent to be retained out of the amount received for duties ;
- For affixing his seal of office to any writing not herein before mentioned and in respect to which no other fee shall be provided by law, twenty-five cents ;
- For making out panels of grand and petit jurors at each term, calculating their allowances and issuing certificates or orders therefor, for each panel, three dollars :
- For services as clerk of the Levy Court and Court of Appeal, a just and reasonable compensation to be allowed by said court ; <sup>67 Levy Ct.</sup>

*The Register*

- 68 Register For granting letters of administration in due form under seal, and drawing and taking bond and making registry thereof, and appointing appraisers, two dollars and twenty-five cents ; except the estate be under one hundred dollars, in which case one half said sum and no more shall be demanded ;
- For taking and registering the probate of a will, two dollars and twenty-seven cents ;
- For granting letters testamentary thereupon in due form under seal and drawing and taking bond and making registry thereof and appointing appraisers, one dollar and seventy-five cents ; and for the copy of the will annexed to such letters, the rate of one cent for every twelve words ;
- For entering renunciation, twelve and one half cents ;
- For filing inventory and making registry of the filing and of the amount of the appraised value of the goods and chattels therein, (and it shall be the duty of the Register to make such registry,) twelve and one half cents ;
- For filing lists of debts, twelve and one half cents ;
- For filing account of executor, administrator or guardian, twelve and one half cents ;
- For adjusting and settling account, certifying such settlement and making registry thereof, with the sum or balance of the account ; if the sum of the debits or credits inclusive of the interest calculated shall not be above one hundred dollars, then one dollar ; if above one hundred dollars, but not above eight hundred dollars, then two dollars ; if above eight hundred dollars, then three dollars ;
- For entering a caveat, twenty-five cents ;
- For issuing a citation, fifty cents ;
- For issuing a subpoena to give evidence, including all the witnesses named for a party before issuing the subpoena, thirty-seven and one half cents ;
- For issuing an attachment, one dollar ;
- For taking depositions at large, upon the litigation of a cause, the rate of two cents for every ten words, and the additional fee of twelve and one half cents for each deposition ;
- For entering interlocutory order upon the litigation of a cause, fifty cents ;
- For entering final sentence or decree upon the litigation of a cause, one dollar ;
- The three items last stated shall never be demanded nor charged upon proving a will in common form, nor upon the common passing of an account ; and the same shall be demanded only in cases of actual litigation upon the services specified being in fact performed ;
- For filing petition or application for revocation of letters of administration or testamentary, fifty cents ;
- For recording a release, acquittance or receipt, the rate of two cents for every twelve words and the additional fee of twenty-five cents ;
- For recording a will and probate or any other writing or matter, which it may be his duty to record, the rate of one cent for every twelve words ;

- For an extract certified under hand upon the application of a person therefor, twelve and a half cents; and if exceeding sixty words, the rate of one cent for every twelve words additionally;
- For affixing his seal of office to any writing not herein before mentioned and in respect to which no other fee shall be by law provided, twenty-five cents;
- For every search when no other service, to which a fee by law is attached, is performed, seven cents;
- The Clerk of the Orphans Court*
- For writing petition for sale or division of lands or assignment of dower, one dollar;
- For exhibiting and filing petition for the division, or for the assignment of dower, or for the sale, of lands and tenements, twenty-five cents;
- For entering order pursuant to such petition, twenty-five cents;
- For issuing such order in due form under hand and seal of office fifty cents and the rate of one cent for every twelve words;
- For receiving and filing return upon such order and entering order of confirmation or other order thereupon, twenty-five cents;
- For writing exhibiting and filing petition of acceptance of lands and tenements at appraised value, twenty-five cents;
- For entering order pursuant to such petition, twenty-five cents;
- For drawing and certifying recognizance, whether of one or more recognizers, for payment of shares of appraised value of lands and tenements, twenty-five cents;
- For every writing, made according to order, of notice of sale, seven cents;
- For exhibiting and filing petition for appointment of guardian, twenty-five cents;
- For entering appointment of guardian, and drawing and taking bond, twenty-five cents;
- For entering order for estimating annual value of ward's lands &c. twenty-five cents;
- For issuing such order in due form under hand and seal of office, fifty cents;
- For filing certificate made on such order and entering approval thereof, twelve and one half cents;
- For issuing subpoena to give evidence, including all the witnesses named for a party before issuing the subpoena, twenty-five cents; 70 Subpoena
- For filing interrogatories and giving written notice thereof and making entry of such filing and notice, issuing commission to take depositions, receiving and filing and publishing depositions returned, the same fees as the Register of the Court of Chancery for like services;
- For issuing citation or other process requiring a party to appear, fifty cents; 71 citation
- For issuing attachment or sequestration, one dollar; 72 Sequest'n
- For filing exceptions to executor's, administrator's or guardian's accounts, twenty-five cents; 73 Except'n
- For entering interlocutory order in case of such exceptions, twenty-five cents;
- For entering dismissal of exceptions, twenty-five cents;
- For entering final decree upon exceptions in case of allowance

of any exception or of any corrections of account excepted to, fifty cents and the rate of one cent for every twelve words ;

But one list of exceptions, although several accounts shall be excepted to therein, shall be deemed to be one case and process shall be issued and fee shall be demanded and allowed in and touching the same, as one case and not as if each account excepted to formed a separate case ;

For filing and safe keeping each account excepted to, seven cents :  
For correcting each account according to decree, and returning the same to the Register, corrected and with certificate in due form, twenty-five cents :

For returning to Register account, wherein no correction shall be made, two cents :

74 counter  
security

For entering an order for counter security, fifty cents :

For entering an order for binding an apprentice, fifty cents :

For entering election of widow of dower or devise, fifty cents :

For taking and filing refunding or other bond, twenty-five cents :

For filing and exhibiting any petition other than before mentioned, twenty-five cents :

75 Minor's  
money

For entering leave and direction to put out minor's money to interest, fifty cents ;

For entering any order other than hereinbefore mentioned, twenty-five cents ;

For entering satisfaction, twelve and one half cents ;

For extract certified under hand, twelve and one half cents ; and, if the same shall exceed more than sixty words, the rate of one cent for every twelve words additionally ;

76 recording

For recording all such petitions, orders, returns, recognizances and other matters, as it shall be his duty to record, the rate of one cent for every twelve words ; but this allowance shall not extend to give additional fee for entering any order or final decree, or any common docket entries in case of exceptions ;

For recording a draught, a sum to be settled by the court, but not to exceed two dollars for draughts in any case, unless there be more than two several tracts of land, whereof division shall be made or dower assigned ;

For search, where no other service to which a fee is attached by law is performed, seven cents ;

For affixing his seal of office to any writing, not herein before mentioned and in respect to which no other fee shall be provided by law, twenty-five cents ;

For lists of liens or incumbrances furnished sheriff to enable him to hold inquisition on lands taken in execution or to apply proceeds of sales of lands sold by the sheriff, when such list is actually furnished, twenty-five cents :

*Also, the Clerk of the Supreme Court, the Prothonotary of the Common pleas, the Clerk of the Peace, the Register of the Court of Chancery, the Register and the Clerk of the Orphans Court respectively*

77 Copies of  
records

For every copy or exemplification the rate of one cent for every twelve words and an additional fee of thirty cents for certificate under hand and seal of office, of attestation ; but a fee for a copy or exemplification shall not be demanded nor charged, unless a co-

py or exemplification shall be in fact required and made; the certificate shall be omitted if so directed: this paragraph shall not be construed to authorize any additional charge in any case, in which a fee for a copy or exemplification is herein before provided nor upon issuing an order or exemplification, if a fee be provided for issuing such order or exemplification;

For a copy of a draught, unless the parties can agree a sum to be taxed by the Chancellor or either of the Judges:

*Attorney at Law*

For every writ if drawn by the attorney forty cents;

78 Attorney  
at law

For appearance for either plaintiff or defendant in a suit, two dollars and sixty-seven cents;

For every appeal bond for prosecuting an appeal in the court of appeals or an appeal from the Orphans Court, one dollar;

For drawing a warrant of attorney, thirteen cents;

For declaration plea, &c. by warrant of attorney, two dollars and sixty-seven cents;

For giving oyer of a bond or other oyer, the rate of one cent for every twelve words, to be paid by the party craving oyer;

For drawing out the general issue, ten cents;

For all pleadings in a cause subsequent to the declaration, to be paid by the party pleading, and for injunction prohibition &c the rate of one cent for every twelve words.

*Notary Public*

For protest in due form of a promissory note, bill of exchange, draft or check and duly registering the same, eighty cents;

79 Notary  
Public

For giving notice of such protest, either personal or otherwise, in proper manner and registering the notice and manner thereof, for each notice, twenty cents;

For exemplification under hand and notarial seal in due form of such protest, twenty-five cents; (but this fee shall not be charged unless such exemplification be in fact required and made;)

For protest in due form of a foreign bill of exchange (to wit, a bill of exchange drawn beyond sea) and registering the same in due form, one dollar;

For exemplification in due form, under hand and notarial seal of such process, seventy-five cents;

For giving notice of such protest, personal or otherwise, in proper manner, and registering the notice and manner thereof, for each notice, thirty-seven and one half cents;

For registering a bill of exchange, promissory note, bank note or check, (but this item shall not be charged if a fee for protest be charged) twenty cents;

For duly registering a common sea protest, seventy-five cents;

For duly registering a foreign sea protest one dollar;

For duly registering a protest against merchant or other person for detaining vessel beyond proper time, with answer and persistence to the protest, four dollars;

For exemplification under hand and notarial seal in due form of either of said three last mentioned protests, one dollar; and the rate of two cents for every twelve words;

For registering an obligation, letter of attorney, bill of sale or other writing of similar length, one dollar;



For taking and certifying under hand and notarial seal the acknowledgment of a letter of attorney or other instrument, sixty-cents;  
 For administering oath or affirmation, drawing affidavit or deposition and duly certifying the same under hand and notarial seal, fifty cents and the rate of two cents for every ten words;  
 For certificate under hand and notarial seal, when no other service, to which a fee is attached by law, is performed, thirty seven and one half cents;  
 For administering an oath or affirmation and duly certifying the same under hand and notarial seal, in case of a deposition or affidavit drawn by another, fifty-cents:

*Coroner*

80 Coroner For viewing the body in case of inquisition of death two dollars;  
 For summoning each witness fifty centy;  
 For each deposition duly taken and returned, fifty cents;  
 For taking and certifying a recognizance, whether of one or more recognizers, twenty cents;  
 For summoning and qualifying inquest and drawing and returning inquisition, four dollars;  
 For mileage from the place of abode of the coroner to the place where the body is found, the rate of two cents per mile, out and in;  
 For arresting any person, whom according to the inquisition found or otherwise it may be his duty to arrest, one dollar, and mileage at the rate of two cents per mile, out and in, from the Court House to the place of arrest, with addition of any extra distance, which it may be necessary to travel, if it shall be his duty to make more than one arrest; the said fees shall be paid by the county; but in case of murder and manslaughter, the said fees shall on conviction of the offender be part of the costs and therewith levied;  
 For serving writ or process or other service in the place of the sheriff, the same fees as allowed to the sheriff for like services:

*The Cryer*

81 Cryer (82) For each day's attendance on the High Court of Errors and Appeals, to be paid by the State, one dollar;  
 For opening and adjourning any other court to be paid by the county, ten cents;  
 For every judgment confessed by virtue of warrant of attorney or otherwise in an action of debt without writ, ten cents;  
 For every action commenced by writ and every amicable action entered, thirteen cents;  
 For every indictment found, thirteen cents;  
 For every trial, twenty cents;  
 For every injunction issued from Chancery, twenty-five cents;  
 For every bill and also for every answer in Chancery filed twenty cents;  
 For every interlocutory or final decree, twenty cents;  
*(In the Orphans Court)*  
 Upon every order for division, sale or assigning dower, of lands and tenements, also upon confirmation of return upon every such order, also upon every acceptance at the valuation and upon every order to value ward's rents, ten cents;

Upon filing exceptions to accounts, twenty cents ; but no other fee in case of exceptions ;

It shall be the duty of the clerk of the Supreme Court, the prothonotary of the Court of Common Pleas, the clerk of the peace, the register of the Court of Chancery and the clerk of the Orphans Court respectively to receive all the fees of the cryer hereafter to accrue in their respective courts, and deducting two and one half per cent to pay him the balance within the times following, that is to say ; in case of fees accruing for judgments confessed, within one year next after the first day of the term, of which such judgments shall be ; in case of fees accruing in any action by writ or amicable action or in suit in Chancery, in criminal prosecution or in case of exceptions, within six months next after the determination or end of such action, suit, prosecution or exceptions, and in all other cases within six months next after the end of the term, wherein the order is made or the business is done, upon which the fees arise ; and it shall be the further duty of the said clerks, prothonotary and register respectively on the first day of each term of their respective courts to deliver to the cryer a just and true account of all his fees in such court, payable to him according to the true intent of the foregoing provision ; and if any fee shall be omitted in such account, the double thereof shall be charged therein, and the same shall be paid by the person so omitting, who shall also forfeit all allowance upon such account ; and if any clerk, prothonotary or register shall refuse to comply with the foregoing provision or any part thereof, such refusal shall be deemed to be a contempt of the court, of which he is an officer ; and he shall be proceeded against by attachment for contempt ;

82 Clerks and Proth'y to collect Cryer's fees & pay them over

83 duty of Clerks

The cryer shall also receive,

For every Attorney admitted on record, one dollar ;

From the Clerk of the Supreme Court, Prothonotary, Clerk of the Peace, Clerk of the Orphans Court and Sheriff upon entering on their respective offices, one dollar :

#### Constable

For every days attendance pursuant to appointment in the Supreme Court, Court of Common Pleas, Court of Oyer and Terminer and General Gaol Delivery and Court of General Quarter Sessions of the Peace and Gaol Delivery (each of which courts may require the attendance of two constables during every term, the grand jury having privilege in the two last mentioned courts of nominating one of said constables, who shall be their bailiff) to be paid by the county, one dollar ;

84 Constable (Constables 12)

But a constable shall not be allowed for attending two courts, setting at the same time ;

For each days attendance pursuant to appointment in the Levy Court and Court of Appeal, to be paid by county, one dollar ;

For attending as bailiff on petit or special jury during trial till verdict, fifty cents ;

For serving warrant in a case of a criminal nature, fifty cents ;

For summoning witnesses or conveying person to gaol on commitment in a case of criminal nature, the same fees as for like services under the "Act providing for the recovery of small debts ;"

For levying money adjudged by two Justices for satisfaction and costs, in case of larceny by a slave, fifty cents;

85 Bailiff

To each bailiff, not a constable, appointed by the court to attend thereon, for each days attendance, one dollar;

*Witness*

86 Witness

For each days attendance in any court or before referees named in a rule of reference entered in court or before Levy Court and Court of Appeal or before a commissioner, register of the Court of Chancery, or prothonotary acting under commission or rule for taking depositions, if living out of the county, eighty cents, otherwise fifty-three cents, with addition to every days attendance of mileage at the rate of three cents per mile going and returning;

87 Jurors

*Jurors ; grand, petit and special summoned and duly attending court.*  
Each of such jurors, for every days attendance (if he being a grand juror shall be sworn or affirmed before the charge given, or being a petit or special juror shall appear at every calling of his name ordered by the court) one dollar with the addition to every days attendance of mileage at the rate of three cents per mile going and returning;

88 No fee to any Petit or Special Juror, who has any issue of fact for trial at the court

Each petit or special juror duly attending on a view granted, for each day, one dollar; provided that no person shall be summoned as a juror to attend court at any term, if he have any matter of fact at issue depending for trial in said court at said term; and this shall be a sufficient cause of challenge to him, and under such circumstance he shall not be compellable to attend nor receive any fee for attendance;

Jurors sworn or affirmed in a cause upon giving verdict, each twelve and one half cents;

89 Jurors on writ of inquiry, elegit, &c.

Jurors of inquest—joining in an inquisition or writ of inquiry of damages, or habere facias seisinam in dower, or de partitione facienda, or elegit, or other writ or commission of inquiry, each, thirty-three cents;

Every juror, joining in an inquisition of death taken by coroner or other officer on view of the body, thirty-three cents;

90 Landlord vs. tenant

Every freeholder (or juror) attending upon summons and joining in inquisition duly taken in a case of a landlord vs. tenant or forcible entry and detainer, one dollar;

91 Freeholders to make partition, &c.

Every freeholder or commissioner appointed by the Chancellor or Orphans Court to make partition, assign dower, or estimate annual value of ward's lands, for each days attendance, (if regular return be made) one dollar;

92 Referees

Every referee named in a rule of reference entered in court, if duly sworn or affirmed and report be duly made; for each days attendance, one dollar with mileage at the rate of three cents per mile going and returning; but mileage shall not be allowed for more than two days attendance;

their oath

Every referee named in a rule of reference shall before signing a report be sworn or affirmed to determine the matters in controversy faithfully and impartially according to the best of his skill and judgment; which oath or affirmation may be taken before the Chancellor, or any Judge of this State, or any Justice of the Peace in and for either of the counties of this State, or before

any burges of the borough of Wilmington ; and each of the said officers severally is hereby authorized and upon application to him for that purpose it shall be his duty to administer and duly certify under his hand the said oath or affirmation ; also any referee named in a rule of reference shall have full authority to administer said oath or affirmation to any other referee named in the same rule and may certify the same ;

Every person not exempt from serving as a juror may be named as a referee in a rule of reference entered in court and required to serve as such ; and if any referee so named shall upon being duly notified neglect or refuse to attend and take upon himself and perform his duty as such referee, every such referee, unless he shall upon notice shew a sufficient excuse to the court in which the rule of reference shall be entered, shall for such default forfeit and pay a sum not exceeding ten dollars to be levied by order of said court in the same manner and by the same proceeding and applied for the same use, as the fine of a juror for making default ;

93 Who may be required to serve as referees

(Courts 76)

*Each Surveyor*

For service of surveyor pursuant to order or process of court or otherwise as required according to law, for each day, two dollars ;

94 Surveyor

For draught with proper notes, just compensation to be settled by the court :

*Each chain carrier*

For every day's service, with accommodation, fifty cents ;

95 Chain carriers

*Each Appraiser appointed by the Register*

For every day's attendance appraising the estate of deceased, one dollar ; except the estate shall not exceed one hundred dollars, then fifty cents ;

96 Appraisers

*Each Commissioner of the Levy Court and Court of Appeal*

For every day's attendance, one dollar and eighty cents with mileage at the rate of three cents per mile going and returning :

97 Levy Ct.

*Each Assessor*

For every day's attendance in the Levy Court and Court of Appeal according to appointment of said court or requirement of law, the same fees as the members of the court ;

98 Assessor

For other services, just compensation to be allowed by said court ;

*Each Freeholder appointed to lay out or review road*

For every day's attendance (if return be duly made,) one dollar ;

99 Freeholders—roads

*Each Collector*

For collecting and paying over State, county, road or poor taxes, a commission to be stipulated between the State Treasurer or Levy Court and Court of Appeal or other authority making the appointment and the person appointed collector, not exceeding in New-Castle and Christiana hundreds six per centum, or in the other hundreds of the State, eight per centum, of the sum, which the collector shall collect and account for ;

100 Collectors

For services in respect to that part of the road tax in Sussex county upon his duplicate paid by labor or materials, five per centum of the amount so paid :

For levying taxes by distress and sale of goods and chattels or timber or grass ; for all the taxes of any person so levied, fifty cents to be levied with the taxes ;

For taking and conveying to gaol a person, to enforce payment of taxes, fifty cents to be paid before discharge :

For advertising and selling lands and tenements, returning sale, and all services in respect to such sale, for levying and making taxes, one dollar ; to be levied with the taxes :

101 Levying  
several taxes  
for same year  
from one per-  
son—one fee

In case of levying taxes by distress and sale of goods and chattels, or by sale of timber or grass, lands or tenements, or of proceeding by imprisonment of the person ; it shall not be lawful to demand several fees for the several taxes in the hands of the same collector against the same person (or persons jointly) for the same year: (as for example, for the county tax, for the road tax, for the poor tax and for the State tax, or such of them as shall be committed to one collector :) but all these taxes against the same person (or persons jointly) for the same year in the hands of the same collector, shall be deemed one entire demand and one fee only shall be chargeable in respect thereto ; and at any time before the day of sale of any goods and chattels, timber or grass, lands or tenements for taxes, the owner or owners or any person for him, her or them may pay the taxes with the costs accrued: and in that case the fee to the collector for advertising the sale of goods and chattels or timber or grass (if advertisements shall have been posted according to law) shall be twenty-five cents, and for advertising the sale of lands and tenements (if advertisements shall have been posted according to law) shall be fifty cents and no more ;

For all services in respect to holding the election for choosing inspector and assessor or other officers chosen at the same time and place and making certificate or return as required by law, one dollar and fifty cents;

102 Delin-  
quents

A collector appointed by the State Treasurer may in his settlements deduct sixteen per centum of the amount of taxes committed by the State Treasurer to him for collection, to cover allowances for delinquents and commissions, until the time appointed by law for the Levy Court and Court of Appeal to allow delinquencies to the collectors by them appointed for the same year ; and the said court at the said time shall make just allowances to collectors respectively in their county appointed by the State Treasurer for delinquents ; and such allowances shall not be made at any other time ; and every collector appointed by the State Treasurer shall immediately after the expiration of such time render a full and final account of the whole amount of the taxes, committed to him by the State Treasurer for collection, and after deducting payments, allowances made as aforesaid for delinquents, if any, and commissions, shall pay the balance to the State Treasurer without delay ; and every collector, appointed by the State Treasurer, for every payment to such Treasurer for taxes shall take duplicate receipts and transmit one of said receipts to the Auditor of accounts within five days after the date thereof, upon pain of forfeiting and paying to the State for every refusal or neglect so to do, a fine of ten dollars to be recovered with costs of prosecution by indictment :

(Levy Ct, 57)

*The County Treasurer*

103 County  
Treasurer

For receiving and paying all such monies, as he shall as such Trea-

suror duly account for, a commission of four per centum upon the amount accounted for :

*The State Treasurer*

Upon all monies by him duly accounted for, received for taxes from collectors whom he shall appoint and according to law be responsible for, a commission of three per centum upon the amount ; upon all other monies, which shall come to his hands as State Treasurer, or as "the trustee of the fund for establishing schools in the State of Delaware," and be duly accounted for, a commission of one and one half per centum, except that a State Treasurer shall not be allowed any commission upon the money in the treasury at the time of his entering upon the office ; and if it shall ever happen, upon the determination of the office of State Treasurer, that the full amount of the money, which ought to be in the treasury, shall not be there, all commission upon the deficiency shall be forfeited and shall on no account be allowed :

And if a State Treasurer having duly appointed collectors and being according to law responsible for them shall die or be removed from office in consequence of inability to perform the duties or of the expiration of the office, before the taxes for the collection of which such collector shall have been appointed shall be paid over to him, the succeeding Treasurer, to whom such taxes or any part thereof shall be paid, shall deduct a commission of three per centum upon the amount so paid to him and shall pay one half of the said commission to the Treasurer appointing said collectors or his executors or administrators :

*Trustees of the Poor*

For every day's attendance at the poor house in performance of the duties of their office, to each of them, one dollar and mileage at the rate of three cents per mile in going and returning, but the entire allowance made to all the trustees of the poor of either county, for one year, shall in no case exceed two hundred dollars :

*The Treasurer of the Trustees of the Poor*

For receiving and paying all monies, a commission of two per cent upon the amount received and paid :

*Each Freeholder selected as a Judge of Election for choosing Inspector and Assessor*

For all services, one dollar :

*Each Clerk appointed at such Election*

For all services, one dollar ; which fees shall be immediately paid by the collector and the receipts of the freeholders and clerks shall be good vouchers :

*Each Inspector for the General Election or a Special Election*

For all services in respect to such election, either preceding the same or on the day thereof, or in tallying the votes and making out the returns as required by law, two dollars :

For attending the meeting of inspectors at the Court House of his county as required by law, one dollar and mileage at the rate of three cents per mile going and returning : but no allowance shall be made to an inspector, if it shall appear that he has not regularly made all the returns required by law :

*Each Freeholder taken as a Judge of a General or Special Election*

For all services, one dollar and fifty cents :

104 State  
Treasurer

105 Trustees  
of the Poor

106 Treasurer  
of the Poor

107 Elections

For taking and conveying to gaol a person, to enforce payment of taxes, fifty cents to be paid before discharge :

For advertising and selling lands and tenements, returning sale, and all services in respect to such sale, for levying and making taxes, one dollar ; to be levied with the taxes :

101 Levying  
several taxes  
for same year  
from one per-  
son—one fee

In case of levying taxes by distress and sale of goods and chattels, or by sale of timber or grass, lands or tenements, or of proceeding by imprisonment of the person ; it shall not be lawful to demand several fees for the several taxes in the hands of the same collector against the same person (or persons jointly) for the same year: (as for example, for the county tax, for the road tax, for the poor tax and for the State tax, or such of them as shall be committed to one collector :) but all these taxes against the same person (or persons jointly) for the same year in the hands of the same collector, shall be deemed one entire demand and one fee only shall be chargeable in respect thereto ; and at any time before the day of sale of any goods and chattels, timber or grass, lands or tenements for taxes, the owner or owners or any person for him, her or them may pay the taxes with the costs accrued: and in that case the fee to the collector for advertising the sale of goods and chattels or timber or grass (if advertisements shall have been posted according to law) shall be twenty-five cents, and for advertising the sale of lands and tenements (if advertisements shall have been posted according to law) shall be fifty cents and no more ;

For all services in respect to holding the election for choosing inspector and assessor or other officers chosen at the same time and place and making certificate or return as required by law, one dollar and fifty cents ;

102 Delin-  
quents

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(Levy Ct. 57)

*The County Treasurer*

103 County  
Treasurer

For receiving and paying all such monies, as he shall as such Trea-

surer duly account for, a commission of four per centum upon the amount accounted for :

*The State Treasurer*

Upon all monies by him duly accounted for, received for taxes from collectors whom he shall appoint and according to law be responsible for, a commission of three per centum upon the amount; upon all other monies, which shall come to his hands as State Treasurer, or as "the trustee of the fund for establishing schools in the State of Delaware," and be duly accounted for, a commission of one and one half per centum, except that a State Treasurer shall not be allowed any commission upon the money in the treasury at the time of his entering upon the office; and if it shall ever happen, upon the determination of the office of State Treasurer, that the full amount of the money, which ought to be in the treasury, shall not be there, all commission upon the deficiency shall be forfeited and shall on no account be allowed :

And if a State Treasurer having duly appointed collectors and being according to law responsible for them shall die or be removed from office in consequence of inability to perform the duties or of the expiration of the office, before the taxes for the collection of which such collector shall have been appointed shall be paid over to him, the succeeding Treasurer, to whom such taxes or any part thereof shall be paid, shall deduct a commission of three per centum upon the amount so paid to him and shall pay one half of the said commission to the Treasurer appointing said collectors or his executors or administrators :

*Trustees of the Poor*

For every day's attendance at the poor house in performance of the duties of their office, to each of them, one dollar and mileage at the rate of three cents per mile in going and returning, but the entire allowance made to all the trustees of the poor of either county, for one year, shall in no case exceed two hundred dollars :

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*Each Freeholder selected as a Judge of Election for choosing Inspector and Assessor*

For all services, one dollar :

*Each Clerk appointed at such Election*

For all services, one dollar; which fees shall be immediately paid by the collector and the receipts of the freeholders and clerks shall be good vouchers :

*Each Inspector for the General Election or a Special Election*

For all services in respect to such election, either preceding the same or on the day thereof, or in tallying the votes and making out the returns as required by law, two dollars :

For attending the meeting of inspectors at the Court House of his county as required by law, one dollar and mileage at the rate of three cents per mile going and returning : but no allowance shall be made to an inspector, if it shall appear that he has not regularly made all the returns required by law :

*Each Freeholder taken as a Judge of a General or Special Election*  
For all services, one dollar and fifty cents :



## FEES.

*Each Clerk employed by Inspector at General or Special Election*  
For each day, one dollar and fifty cents :

*Each Clerk appointed by the Board of Canvass of General or Special Election*

For all services, fifty cents :

*Each Fence Viewer*

108 Fence  
viewers

For every day's attendance, when duly required, one dollar and mileage at the rate of three cents per mile going and returning, to be paid by the party requiring the attendance : but the fence viewers, if they shall consider that their attendance was properly required, may award the costs or any part thereof to be paid by such person or persons concerned, as they may deem equitable and just :

*The Clerk of the Senate, also the Clerk of the House of Representatives besides daily allowance*

109 Clerks of  
the General  
Assembly

For engrossing, the rate of two cents for every twelve words ;  
For copy made upon request, the rate of one cent for every twelve words and twelve and one half cents for certificate of attestation ;

For reading and filing every petition of a private nature, fifty cents ;

For drawing any process of arrest or summons, one dollar :

*The Sergeant at Arms*

110 Sergeant  
at arms

For serving process of arrest, or other process or order, (subpoena excepted) one dollar ;

For serving subpoena to give evidence or produce papers, whether issued by speaker or chairman of committee, for each person served, twenty-five cents ; mileage, upon doing either of such services, at the rate of six cents per mile going and returning ; calculating mileage in case of service upon several persons for the distance to the place of abode of one of said persons and adding such extra distance, as shall be necessary to be travelled to complete the service and return ;

For each day's attendance upon person committed, twenty-six cents :

*The Bell-ringer to the General Assembly*

111 Bell rin-  
ger

For each day, thirty-three cents :

112 Not al-  
lowable in ca-  
ses before Jus-  
tices or on ap-  
peal

Sect. 2. Any clause or provision prescribing a fee or fees, contained in the foregoing section, shall not extend to an action or proceeding before a Justice of the Peace under the " Act providing for the recovery of small debts," nor to an appeal from, or certiorari upon, a judgment in such action or proceeding, nor to any proceeding on such appeal or certiorari, nor to process upon a judgment given upon such appeal or certiorari nor to the service of such process, nor to any proceeding in the Court of Common Pleas upon a judgment of a Justice of the Peace pursuant to the twenty-first section of the said Act, nor to the service of process of said court on such judgment ; excepting only the provisions for the fees of constable attending jury on trial, of jurors sworn or affirmed in a cause on giving verdict, of referee named in rule of reference entered in court, and of the officers for striking and summoning special jurors, and of such jurors for attendance ; but the forty-fifth section of the said Act shall continue in full force

(Justices of  
the Peace 101  
189)  
113 except

subject to said exception and also subject to the following addition to the fees therein contained and alteration of some of them, to wit:

*The Prothonotary or Clerk*

For filing and entering, pursuant to the twenty-first section of the Act aforesaid, transcript of the docket entries of a Justice of judgment and execution, sixty-seven cents; 114 Protho'y or Clerk—cases from Justice

For issuing process upon such judgment, or judgments in case of appeal from a Justice, to wit, for elegit, seventy-five cents;

For any other execution, thirty-seven and one half cents;

For scire facias, fifty cents: and for all entries, in case of such scire facias, to a judgment thereon inclusive, unless there shall be trial, fifty cents; and in case of trial, the same fees to witnesses and to all officers, for their respective services, as allowed for like services in case of appeal from the judgment of a Justice of the Peace; (Justice of the Peace 186)

An execution may be issued upon a judgment, a transcript whereof shall be filed and entered in the Common Pleas as aforesaid, or on a judgment in case of appeal at any time within five years from entering the transcript or giving the judgment on appeal, without scire facias, except it shall be necessary to make a party defendant; if it shall be necessary to make a party plaintiff, this may be done by suggesting the facts and stating the proper party on the record, without scire facias, and the proceeding shall be in the name of the proper party so stated; 115 Sci. Fa. not necessary for 5 years—party plaintiff may be made without Sci. Fa.

*The Sheriff*

For serving and returning process of execution upon judgments; the transcript whereof shall be entered in the Common Pleas as aforesaid, and also upon judgments in cases of appeal, as follows, to wit, 116 Sheriff on process from court, but cases originating before Justices

For levy on goods and making and returning inventory and appraisement, fifty cents;

For levying and holding inquiry on lands and tenements and returning inquisition, one dollar;

For executing and returning writ of elegit; two dollars; and each juror, joining in an inquisition taken on a writ of elegit, shall be allowed twenty-five cents;

For advertising sale of goods, thirty-seven and one half cents; sale of lands and tenements, seventy-five cents;

For any other services, in consequence of which money shall be applied to such judgment as above mentioned or to execution thereon, dollarage, according to the provisions concerning dollarage in the first section of this Act.

There shall be no additional fee for appraisers of goods and chattels levied on, nor for freeholders making inquisition in case of lands and tenements levied on; the provision in the first section, requiring the sheriff to return his fees, shall apply in all its parts to the cases above mentioned; also the provisions in said first section, concerning notice of sale of goods and respecting the time of selling, shall be in force in relation to levies on goods in execution of judgments on appeal and judgments whereof transcripts shall be entered as aforesaid. 117 return of fees—notice of sale (28-12-13)

Sect. 3. In case of conviction upon indictment, whether of a 118 in criminal cases—

- costs on conviction capital or other crime or offence, all the costs shall be paid by the party convicted; and the court, in which the judgment upon any such conviction shall be, in every capital case shall, and in every other case may, make a special order that all the costs in the case (and also in cases in which judgment shall be for the payment of restitution money, fine or penalty, that such restitution money fine or penalty) shall be levied and made of the goods and chattels, rights and credits, lands and tenements of the party convicted and award a writ of fieri facias, with clause for summoning garnishees (called a fieri facias attachment,) and if necessary a writ of venditioni exponas for executing such order; and the same proceedings shall be had upon the said writs, as upon like writs issued upon judgments for debt or damages; excepting that the lands and tenements of the party convicted shall, for want of goods and chattels, be sold without any inquiry of the rents and profits of such lands and tenements and without respect to the value of such rents and profits; and upon a return on a writ of fieri facias attachment, of the taking, for the want of goods and chattels, of lands and tenements of the party convicted, in execution, duly describing such lands and tenements, a writ of venditioni exponas shall be awarded; and all acts done for the due execution of such writs and pursuant thereto shall be valid and effectual to all intents and purposes;
- 119 Order & execution (121) The foregoing provisions shall not take away any part of the judgment heretofore given upon a conviction, but shall be entirely accumulative, and judgment shall be rendered in the same form as if this section had not been passed; and such order as aforesaid may be made and execution may be awarded and executed as aforesaid, although the party convicted may be at the same time in custody under commitment for non-payment of the costs, restitution money, fine, or penalty or otherwise in execution of the judgment; and such order shall, from its date, be a lien upon all the lands and tenements of the party convicted, in the county.
- 120 form of judgment not altered If upon indictment the defendant shall be acquitted or if he being convicted shall not be able to pay the costs; the costs shall be paid by the county: in cases of surety of the peace, (which are herein deemed to be cases of a criminal nature) the court may order that the costs shall be paid by the defendant; or by the prosecutor or by the county, as they shall deem just.
- 121 Order & execution, altho party committed Sect. 4. Upon the entering or giving of judgment in, or other termination whatever, or the staying of, any cause or action in the High Court of Errors and Appeals, the Supreme Court, Court of Common Pleas, or Court of Chancery or criminal prosecution in the Court of Oyer and Terminer and General Gaol Delivery, or in the Court of General Quarter Sessions of the Peace and Gaol Delivery, the clerk, prothonotary or register of such court shall enter upon the public docket of such court of such cause, action or prosecution within twenty days next after such judgment, termination or stay shall be entered a full bill of all the costs in said cause, action or prosecution, therein setting down plainly and distinctly every item of his own fees and also every item of the fees of the sheriff and every other officer and person, so far as the same shall be known to him or he shall have in his office means of ascertaining the same;
- Order a lien
- 122 Costs payable by county
- 123 Discret'n of court as to costs in cases of surety of the Peace
- 124 Costs must in all cases, civil & criminal, be entered upon the docket—duty of C'ks, &c. herein

also upon issuing any execution or order or process in nature of an execution, whereby any costs are to be demanded or levied and made, the clerk, prothonotary or register issuing the same shall indorse thereon all the costs up to the time of the issue and shall set down in such indorsement every item of any sheriff's fees, and the amount of the fees of every other officer and person, and the names of the officers and persons respectively for whose services such fees shall have accrued, except that the fees of jury and bailiff and of referees may be set down generally under those heads; and in the Orphans Court the clerk thereof shall within twenty days after entry of a final decree or other termination in a case of exceptions to accounts enter on the docket of said court a full bill of the costs in such case and shall also when recording an order, return or other matter enter in the margin of such record a full bill of costs on such order, return or other matter and shall set down in such bills respectively every item of his own fees, and every item of the fees of every other officer or person so far as he shall know or have in his office means of ascertaining the same; and upon issuing an order, he shall indorse thereon every item of his own fees in the case up to the time of such issue;

125 Costs indorsed on executions, &c.

126 Manner of indorsing

127 In O. Ct. costs to be entered by Cl'k on docket or record

128 indorsed on order issued

And if any clerk, prothonotary or register shall refuse or neglect to perform fully and faithfully any duty by this section enjoined upon him; he shall for every such refusal or neglect forfeit all his fees that should have been set down in the bill or indorsement, which in performance of such duty he ought to have entered or made; and furthermore he shall be liable to be indicted for every such neglect or refusal, and on conviction thereof shall pay to the State a fine of thirty dollars with the costs of prosecution;

129 Penalty on Cl'k, Prothon'y, Reg'r. for neglect (129-128)

It shall be the duty of each of the courts aforementioned upon application by or on behalf of a party concerned, to revise any bill of costs entered upon the docket or records of such court and also any return or indorsement of fees upon any writ, order or process of such court; and also any bill of fees demanded for services in such court or for the execution of the order or process thereof and to correct any errors appearing on such revision, without requiring any specification of errors:

130 Court to tax costs

No fee shall be allowed for any service, until it shall be performed; every provision allowing a fee shall be construed strictly; and the fee under it shall not be allowed for any service, which shall not come within the explicit meaning of the terms.

131 No fee—unless explicitly allowed

Sect. 5. Every officer or other person or his executors or administrators upon demanding any fees shall, if it be requested, subscribe and deliver to the person or persons upon whom such demand shall be made, a bill of the fees demanded, containing every item plainly and distinctly set down, and shall upon payment, subjoin or annex to such bill a receipt under hand, if requested: and every sheriff upon payment to or settlement with him of an execution by a defendant or defendants shall if requested, subscribe and deliver to him or each of them a bill of the particulars demanded upon such execution, to wit, the debt or damages, the interest, every item of the costs indorsed thereon and every item of his own fees on the same, and also a receipt, or if there be more than one defendant joining in making the payment or settlement, duplicate

132 Bills and receipts for fees

133 penalty  
for refusal or  
neglect

receipts or acknowledgments of such payment or settlement; and if any officer or other person shall receive any fee or fees and shall refuse or neglect, upon request, to subscribe and deliver a bill or a receipt according to the form and effect of the foregoing provisions in those particulars, or if any sheriff upon payment to or settlement with him of an execution by a defendant or defendants shall, if requested, refuse or neglect to subscribe and deliver to him or to each of them a bill of particulars or a receipt or duplicate receipts or acknowledgments according to the form and effect of the foregoing provisions in those particulars; every such sheriff, officer or other person shall be liable to indictment for every such refusal or neglect, and on conviction thereof, shall pay to the State a fine of fifty dollars, with costs of prosecution.

134 unlawful  
fees

Sect. 6. If any officer or other person hereinbefore mentioned shall take more or greater fees, for doing any the services hereinbefore mentioned, than hereinbefore prescribed or shall for any service in execution of or pertaining to his office take any fee not provided by law or shall charge or take any fee hereinbefore prescribed before the service, for which it is prescribed, shall have been in fact performed, unless the fee or fees so prescribed for such service shall be voluntarily tendered or paid; every such officer or person shall be liable to be indicted for every such offence and shall upon conviction thereof pay to the State a fine of sixty dollars and the costs of prosecution; and a copy of the record of every such indictment and conviction shall be made and duly certified and transmitted to the Governor under the direction of the court, in which such record shall be; and the Governor shall lay the same before the House of Representatives, at the session of the General Assembly next succeeding; and the costs of making and certifying such copy shall be allowed by the court and taxed as a part of the costs of prosecution.

135 Copy of  
record trans-  
mitted to Go-  
vernor & laid  
before Gen'l  
Assembly

136 Specified  
practice in  
Chancery and  
in courts of  
law not af-  
fected

Sect. 7. Provided that this Act shall not be construed to annul or interfere with the practice of the Court of Chancery of making allowances for services, except as to such services as are hereinbefore expressly specified and provided for, or with the practice of any court in making a reasonable allowance for taking depositions by virtue of a commission issued out of such court; but compensation for taking depositions in the office of the register or by the prothonotary of the Court of Common Pleas in case of petition for freedom whether in term or in vacation, or by the register of the Court of Chancery, shall in every case be allowed according to the provisions hereinbefore in those particulars contained.

*Passed at Dover, February 2, 1826.*

## II.

1826

### AN ACT establishing certain fees for the use of the State.

137 Fees to  
State, to be  
received by  
138 Secretary  
of State

Section 1. There shall be demanded and received for the use of the State, the fees hereinafter mentioned; that is to say:

*By the Secretary of State*

For commission to sheriff, including fee for writ of assistance, to

be paid by every sheriff upon issuing his commission, twenty dollars.

For commission to Attorney General, Coroner, Register, Recorder, Justice of the Peace, Clerk of the High Court of Errors and Appeals, Clerk of the Supreme Court, Prothonotary, Clerk of the Peace, Clerk of the Orphans Court, and Register of the Court of Chancery, to be paid by each of said officers, upon issuing his commission, ten dollars.

For every impression of the Great Seal in private cases, one dollar.

*By the Clerk of the Peace*

For every marriage license, two dollars.

For every license for keeping a public house of entertainment, tavern, inn, alehouse, ordinary or victualling house, twelve dollars; recommendation for such license may be granted at any term of the Court of General Quarter Sessions of the Peace and Gaol Delivery; the said fee being always first paid to the clerk of the peace, who shall give a receipt therefor: and the Judges composing said court shall cause to be delivered to the Secretary of State a list certified under their hands of all the persons recommended at any term for such licenses as soon as convenient after the end of the term: and the clerk of the peace shall, within sixty days after the end of such term, pay to the Secretary of State all and every the sums of money which shall have been paid to the said clerk for fees for such licenses by the persons recommended as aforesaid; and if any clerk of the peace shall neglect to do so he shall ipso facto forfeit his office; and the Secretary shall direct suit to be instituted against him and his sureties upon his bond. The license shall bear date of the last day of the term, wherein the recommendation therefor shall be granted, shall continue in force one year from such date and shall relate to the day on which the recommendation was granted: Any fee paid by or for a person, who shall not be recommended, shall be refunded by the clerk of the peace on demand.

For every license to a vender of tin and japanned wares, 1st, to travel without a cart or other carriage but with horses or beasts of burden, one or more, ten dollars; 2d, to travel with a cart or other carriage drawn by horses or beasts of burden, one or more, twenty dollars: and any person, who shall in this State carry about for sale, either with a horse, horses or beasts of burden, one or more, or with a cart or other carriage, any tin or japanned wares without a license for that purpose first obtained, shall forfeit and pay for every offence the sum of thirty dollars to be recovered before any Justice of the Peace with costs of suit, by any person, who will sue for the same, and applied one half to the use of the person suing and the other half to the use of the State.

For every license to a hawker, pedler or petty chapman, 1st, to travel without a horse or beast of burden, eight dollars; 2d, to travel without a cart or other carriage, but with one horse or beast of burden, sixteen dollars; with two horses or beasts of burden, thirty dollars; for every additional horse over two to.

(Acts of Assembly—8)

139 Clerk of the Peace  
Licenses—  
marriage  
140 tavern  
(Taverns)  
(Constables  
12)

(Slaves—2)

141 Venders of tin

penalty

142 Pedlery

be included in a license, ten dollars shall be added to the last mentioned fee;

sd, to travel with, a cart, waggon or other carriage drawn by one horse or beast of burden, twenty-five dollars, drawn by two horses or beasts of burden, thirty-five dollars; and for every additional horse or beast of burden to be included in the license, ten dollars shall be added to the last mentioned fee: and any person, who in this State shall deal, trade or traffick as a hawker, pedler or petty chapman without license as aforesaid first obtained for that purpose, or shall travel otherwise than his license shall permit and justify, and also any hawker, pedler or petty chapman, who shall lend or transfer his license, and also any person, who shall borrow or receive such license for the purpose of dealing or travelling under the same, shall forfeit and pay the sum of five hundred dollars to be recovered by action of debt in the Supreme Court or Court of Common Pleas at the suit of any person, who will sue for the same and applied one half to the use of such person and the other half to the use of the State. And every hawker, pedler or petty chapman, upon his license being required by a Justice of the Peace, constable or other civil officer, shall exhibit the same upon pain of forfeiting for every refusal, ten dollars to be recovered before any Justice of the Peace, other than such as shall make the requirement, at the suit and for the use of the State. No license shall be granted to any hawker, pedler or petty chapman, until he shall in the Court of General Quarter Sessions of the Peace and Gaol Delivery with two sufficient sureties to be approved by the court enter into recognizance to the State of Delaware in the penalty of five hundred dollars, conditioned to be void, if he shall observe and conform to the laws of said State, pay all duties and taxes that shall be legally assessed or imposed upon him, and shall in all things behave himself well during the continuance of the license to be granted pursuant to such recognizance.

#### penalties

143 required  
to show license

144 Security  
before license  
issued

145 except'n  
goods  
manufactured in this  
State & books

146 penalty  
for selling  
medicines, &c

147 continu-  
ance of li-  
cense

148 Special  
bail

149 Blanks

But none of the foregoing provisions in relation to a hawker, pedler or petty chapman shall extend to any manufacturer selling or carrying about for sale any articles manufactured in this State or to any person selling or carrying about for sale any grain, provisions, provender or fruits or to any person travelling exclusively for the sale of books.

No hawker, pedler or petty chapman shall sell or expose to sale any drugs or medicine upon pain of forfeiting for every offence one hundred dollars to be recovered by action of debt in the Supreme Court or Court of Common Pleas at the suit of any person, who will sue for the same, and applied one half to the use of such person and the other half to the use of the State. Every license for carrying about for sale tin or japanned wares and every license to a hawker, pedler or petty chapman shall continue in force one year from the date and no longer and shall be so expressed.

In every action for a penalty under this Act, special bail may be required in the amount of the penalty or penalties sued for, upon affidavit of the offence or offences having been committed.

The Secretary of State shall supply to the clerks of the peace

blanks duly signed and sealed for marriage licenses, licenses to venders of tin and japanned wares, and licenses to hawkers, peddlers and petty chapmen, and shall keep a true account thereof. The clerks of the peace may appoint such Justices of the Peace in their respective counties, but not less than six in each county, as they may respectively select as most proper for distributing marriage licenses, and furnish to each Justice a proper supply of blanks: no person but clerks of the peace and Justices by them selected as aforesaid shall distribute marriage licenses. The clerk or Justice issuing such license shall take from the party applying for it bond to the State of Delaware with good security in the penalty of two hundred dollars, with condition according to the following form, viz. *The condition of the above written obligation is such, that if*

*and may lawfully unite themselves in marriage, and if there be no legal objection to celebrating the rites of marriage between them, then the said obligation shall be void, otherwise in force*; blanks for which bonds shall be supplied by the Secretary of State, with the blanks for the licenses; and all the bonds taken in any county shall be filed in the office of the clerk of the peace for such county in alphabetical order with a label on each file shewing the year or years embraced; the clerks of the peace shall on the fourth Tuesday of January, April, July and October or within ten days after each of said respective days, render and transmit to the Secretary of State full and true accounts of all monies by them respectively received for fees for marriage licenses, licenses to venders of tin and japanned wares and licenses to hawkers, peddlers and petty chapmen; each account shewing the number of blanks received and the number remaining on hand, and pay to the Secretary of State the sum due upon such account. Every failure to transmit such account or to make such payment shall be deemed a misdemeanor in office and shall be certified by the Secretary of State to the General Assembly at the next session after it shall happen. The clerks shall be responsible for the Justices whom they may appoint to distribute marriage licenses, and may demand the fees on furnishing the blanks. Blanks for tavern licenses shall be supplied by the Secretary of State according to the lists delivered to him. For all payments made by clerks of the peace to the Secretary of State duplicate receipts shall be taken, of which the clerks shall transmit one to the Auditor of accounts. The decease of the Governor or of the Secretary of State shall not avoid blank licenses duly signed and sealed. All monies, that shall be received for fees for marriage licenses and tavern licenses, shall be appropriated to "the fund for establishing schools in the State of Delaware," subject to be applied in case of necessity to the payment of the salaries of the Chancellor and Judges according to the law in this behalf provided; all other fees received under this Act shall belong to the funds of the State.

The Secretary of State shall pay over all monies that shall come to his hands belonging to the funds of the State or to "the fund for establishing schools in the State of Delaware," to the State Treasurer or to the Trustee of the said fund, as the same shall belong, and shall in December in every year settle his account before the Auditor of accounts and shall at the session of the General Assem-

150 Accounts & payments by Clks of Peace & penalty for neglect

152 Blanks for tavern licenses

153 duplicate receipts.—one for Auditor

151 appropriation

155 Account of Secretary



bly next after said settlement lay a copy of the account so settled before each house of the General Assembly.

*Passed at Dover, January 26, 1826.*

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## FENCES.

### I.

18 Geo. II. *AN ACT for regulating fences within this Government.*

1 Lawful fences  
(8-10-11-2)

**Section 1.** Corn-fields and ground kept for inclosures shall be fenced with a post and rail-fence, or worm-fence well staked and ridged, at least four feet and an half high from the top of the upper-rail or rider to the ground; and all worm-fences not staked and ridged shall be at least five feet high from the top of the upper-rail to the ground: *And* if any horses, kine, sheep, hogs or goats or any kind of cattle shall break into any person's inclosure, the same being found by the persons to be appointed viewers, according to the direction of this Act to be of the height and sufficiency aforesaid, then the owner of such horsés, sheep, goats or cattle, shall be liable to make good all such damages to the owner of such inclosure, as shall be found and awarded by the said viewers upon their oath or affirmation made before some Justice of the Peace of the county where the trespass is committed.

2 damages for  
trespasses  
(18)

3 Owners of  
unruly cattle  
&c not restraining them

**Sect. 2.** All persons, having any unruly horses, sheep, goats or cattle as aforesaid not to be kept off by such fences as aforesaid and notice being first given to him, her or them, of such creatures being unruly, are ordered and shall be obliged to take effectual care to restrain the same from trespassing on any person's inclosures upon penalty of five shillings, or double damages for every such trespass, at the election of the party injured.

4 Division  
fences

**Sect. 3.** Where any person or persons shall inclose any land adjoining to another's land already inclosed with a fence, so that any part of the fence first made become the partition between them, in such case the charge of such division-fence, so far as is inclosed on both sides, shall be equally borne and maintained by both parties: to which end and the others mentioned in this Act, each County Court within this government shall nominate and are hereby empowered and required, at their respective Courts of Quarter Sessions to be held in the month of May every year, to nominate and appoint so many proper persons, as they shall think fit for each hundred in each county respectively to view all such fence and fences, about which any difference may happen to arise:

5 Fence  
Viewers  
(17)

6 their powers  
(16)

*And* the aforesaid persons in each hundred respectively shall be the sole judges of the charge to be borne by both or either of the said parties and of the sufficiency of all fences, whether partition or other fences and of the damages sustained by means of any creature's trespassing within the true intent and meaning of this Act; and where they judge any fence to be insufficient, they shall

give notice thereof to the owners or possessors; and if one of the said owners and possessors upon the request of the other and due notice given by the said viewers shall refuse to make or repair the said fence or fences or pay the moiety of any fence before made, being a division-fence, within five days after notice given, then, upon proof thereof before one Justice of the Peace of the respective county, it shall be lawful for the said Justice to order the person aggrieved and suffering thereby to repair the said fence or fences, who shall be reimbursed double his costs and charges from the person so refusing to make good the said partition-fence.

7 Order of Justice of the Peace (18)

Sect. 4. Nothing in this Act contained shall be construed, deemed or taken to repeal or make null or void an Act of General Assembly of this government, intituled, *An Act for erecting a pound in the town of New-Castle*, or any part thereof; but the same shall continue and be in full force, any thing herein contained to the contrary in any wise notwithstanding.

## II.

### A SUPPLEMENT to an Act, intituled, *An Act for regulating fences within this government.* 1770

Whereas the Act, intituled, *An Act for regulating fences within this government*, passed in the thirteenth year of the reign of his late Majesty George the Second, hath made no provision for making ditches, hedges or stone walls, inclosing lands, lawful fences; for remedying whereof, and for the encouraging of such species of inclosures,

Section 1. All ditches or drains having a post and rail fence or a worm fence well staked and ridered at least five feet of a perpendicular height from the top of the upper rail or rider to the bottom of such ditch or drain or a hedge of thorn close set of the height aforesaid erected or planted within two feet from the edge of such ditch or drain, and all stone walls of the height of four feet and an half from the ground or otherwise three feet high, with a fence thereon of rails well staked and ridered at least one foot and an half above the said wall, shall be deemed, taken and held as and for sufficient and lawful fences, to all intents and purposes whatsoever.

8 A lawful fence, in case of a ditch or thorn hedge

Sect. 2. If any horses, kine, sheep, hogs, goats or any kind of cattle shall break into any person's inclosure (the same being found to be of the height and sufficiency aforesaid by the persons appointed or hereafter to be appointed viewers according to the directions of the said Act;) the owner of such horses, kine, sheep, hogs, goats or any kind of cattle, shall be liable to make satisfaction for the damage done to the owner of such inclosure in such sort, as in the aforesaid Act is mentioned and ordered in other cases.

9 Damages for trespasses (2-6-18)

Sect. 3. Where any person or persons have already inclosed or shall hereafter inclose any land with a fence and ditch, or hedge and ditch, of the height and sufficiency aforesaid and so declared and determined by the fence-viewers, and the same fence and ditch, or hedge and ditch, or any part thereof, are or may become a partition between them and any other person or persons

10 Division fence—ditch, hedge, &c.

(4) having improved or inclosed lands adjoining the same: in such case the charge of such division fence and ditch, or hedge and ditch, so far as is improved or inclosed on both sides shall be equally borne, repaired and maintained by both parties, and may be ascertained, recovered and paid in such manner and form as by the aforesaid Act of Assembly is directed concerning other fences: And where any stone wall of the height and sufficiency aforesaid is or shall be erected on the line between any two persons having lands improved or inclosed adjoining thereto, by or at the expense of any one of them; the person or persons having so erected such wall may and shall apply to the fence-viewers of the hundred where the same is so erected, who are thereupon authorized, empowered and required to fix and determine the charge or expense of making a good and sufficient fence of posts and rails of the length of such wall and of maintaining and repairing the same annually thereafter, according to the best of their skill and judgment, of which they shall without delay give notice to the parties concerned; and the owner or possessor of the land improved or inclosed and adjoining such partition wall shall be liable to pay to the person or persons erecting the same the moiety of the sum, which a fence of posts and rails as aforesaid would in such their opinion cost; and the moiety of the annual expense of supporting such a fence according to the estimate made by them as aforesaid shall be a charge upon the person or persons holding the lands adjoining such wall during the continuance of the same, unless he, she or they shall pay to the person or persons, who erected such wall, or to such person or persons, who may hereafter purchase or inherit the same, a moiety of the value of the same to be determined by the viewers for the time being.

12 Division drains in marshes

Sect. 4. On all division-lines between owners or possessors of meadow, marsh or cripple inclosed by a bank or dyke from the waters of any river, creek or run, where any owner or possessor shall think proper to improve his said meadow, marsh or cripple and to have the same divided from the meadow, marsh or cripple adjoining, the owner or possessor of the adjacent meadow, marsh or cripple (be the same improved or unimproved) shall and he is hereby ordered, to join with the adjacent owner or possessor in cutting a drain or ditch of the width of eighth feet and the depth of two feet and an half or upwards and making a post and rail fence or a worm fence well staked and ridged at least two feet high from the top of the upper rail or rider to the ground and within one foot from the edge of such drain or ditch so far as the same is a line between them, at a moiety of the expense and labor necessary in cutting and making the same. All such division-drains or ditches shall be well and sufficiently scoured and cleansed at least once in every year and the fence erected thereon in manner aforesaid repaired as often as necessary by the owners or possessors of the meadow, marsh and cripple adjoining both sides of the same, and shall be deemed, taken and held as and for lawful fences; and if any owner or possessor of the same shall refuse or neglect to unite in cutting such drain or ditch and making such fence, or hereafter to scour and cleanse his proportionable part of the same drain or ditch and to repair his share of the same fence to be made as aforesaid;

13 & fences thereon

it shall and may be lawful for the owner or possessor of the adjoining meadow, marsh or cripple, to cut such drain or ditch and make such fence on the same line as far, as it divides the property of the said owners or possessors, and afterwards once in every year to scour, cleanse and repair the same and to exhibit an account of the expense and labor in doing thereof to the fence-viewers of the hundred for their approbation; and if the said fence-viewers shall think the works aforesaid sufficient for the intended purposes according to the directions of this Act, they shall forthwith proceed to ascertain the real cost and value of the same under their hands, and deliver the same to the aforesaid owner or possessor, who having first proved the same by oath or affirmation, is hereby authorized and empowered after ten days from the time of producing the same account to, and demanding payment from, the owner or possessor of such adjacent meadow, marsh or cripple, if the same shall not be discharged or satisfied, to recover the same with lawful interest and double costs: the account aforesaid allowed and proved as aforesaid, shall be sufficient evidence. And if any person possessing such lands, meadows, marsh and cripple or either of them be a guardian to any minor, he shall be allowed the sum or sums so expended or paid in his account with his ward; and if a lessee or renter, he may deduct the same out of his annual rent, unless otherwise stipulated by contract.

(18)

14 Guardian or tenant allowed

Sect. 5. This Act shall not extend to or be construed to repeal or alter any Act of Assembly of this government for the imbanking and improving of any meadow, marsh or cripple, within the same, whereby any other provision is made for the regulation of division-drains, canals, or fences, any thing herein contained to the contrary notwithstanding.

15 Not to alter any Act regulating division drains, &c.

*Passed March 24, 1770.*

### III.

#### AN ADDITIONAL SUPPLEMENT to an Act, entitled, "An 1804 Act for regulating fences within this government.

Section 1. That any three fence viewers, or a majority of them, appointed or hereafter to be appointed, under the direction of the Act, to which this is an additional supplement be and they are hereby empowered to do and perform all and every act, matter and thing enjoined upon the fence viewers in said Act.

16 Three fence viewers may act

Sect. 4. The Clerk of the Peace in each of the counties of this State is hereby required to issue a warrant under his hand and seal to each of the fence viewers, that may be hereafter appointed in the hundreds of the counties respectively, and shall also write and sign a number of advertisements equal to the number of fence viewers appointed in each hundred, giving notice of the persons appointed in the hundreds respectively, who shall have for his services a reasonable compensation to be adjudged of and allowed by the Levy Court.

17 Warrants to fence viewers & notice, by Clerks of the Peace

*Passed at Dover, Jan. 24, 1804.*

## IV.

1829 AN ACT to amend the Act for regulating fences within this government.

18 Jurisdiction  
of Justice

Section 3. 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."

*Passed at Dover, February 13, 1829.*

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## FINES.

1829

AN ACT concerning fines and forfeitures.

1 Appropriation

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 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.

2 neglect to  
pay over—  
rate chargeable

3 Clerk of  
the Peace to  
transmit list  
to State Treasurer  
(Auditor  
of accounts—  
36)

4 penalty for  
neglect

5 Action bro't  
in name of  
the State

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.

*Passed at Dover, January 23, 1829.*

## FIRING OF CHIMNIES.

273

**AN ACT** *for preventing accidents that may happen by fire in any of the towns or villages within this government.* 25 Geo. II.

If any person or persons within any town or village of this government shall set on fire any chimney or chimnies of the house or houses wherein he, she or they dwell, to cleanse the same, or by neglect shall suffer his, her or their chimney or chimnies to take fire and blaze out at the top thereof; every such person being thereof duly convicted, by the oath or affirmation of one credible witness or the confession of the party or parties offending, before any one Justice of the Peace of the town or hundred wherein such chimney shall take fire, shall for every such offence or neglect, forfeit the sum of twenty shillings to be levied together with costs of prosecution on his, her, or their goods and chattels by distress and sale thereof to be made, by warrant under the hand and seal of such Justice; which said forfeiture shall be paid to the Treasurer of the respective county for the time being for the use of the poor of the town or hundred, wherein such chimney shall take fire.

1 Chimney set on, or taking, fire  
penalty

**A SUPPLEMENT** to an Act, entitled, "*An Act for preventing accidents that may happen by fire, in any of the towns or villages within this government.*" 1803

Section 1. The penalty incurred by firing of chimnies, as provided by the Act before recited, shall be recovered before any Justice of the Peace, by and for the use of any incorporated fire company, prosecuting for the same within any town or village in this State where the offence may occur, and in such of the towns or villages, where no such fire company doth or shall not hereafter exist at the time, the fine or penalty may be incurred in the same manner and for the same use as is provided by the Act, to which this is a supplement.

2 penalty appropriated

*Passed at Dover, January 24, 1805.*

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## FIRING WOODLAND & MARSH.

**AN ACT** *against the firing of wood-lands and the unseasonable firing of marshes.* 1827

Section 1. 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 misdemeanor 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

Setting on fire woodland or marsh

Proviso 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 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 wood-land on fire. If any negro or mulatto slave shall commit the misdemeanor herein before described every such slave, upon conviction thereof, before any Justice of the Peace for the county, wherein the misdemeanor shall be committed, shall be whipped with any number of lashes not exceeding thirty-one upon the bare back.

*Passed at Dover, January 23, 1827.*

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## FISHERIES.

### I.

#### 1812 AN ACT for the preservation of certain shell fisheries within this State.

1 Non-resident taking oysters, &c. in this State forfeiture

Section 1. No person not residing in this State, shall rake or gather any oysters, terrapins or clams within the same and put them on board of any canoe, flat, scow, boat or other vessel not wholly belonging to and owned by some person or persons who live in this State, under the penalty of forfeiting such canoe, flat, scow, boat or other vessel, together with all the oysters, oyster-rakes, tongs, tackle, furniture and apparel in and belonging to the same.

2 Proceedings

Sect. 2. Any person, who shall seize and secure any such canoe, flat, scow, boat or other vessel aforesaid, shall immediately thereupon give information thereof to any two Justices of the Peace of the county, where such seizure shall have been made, who are hereby empowered and required to meet at such time and place, as they shall appoint, for the trial thereof; and the same if condemned shall with all things thereunto belonging be sold by the order and under the direction of the said Justices, who after deducting all legal costs and charges shall pay the one moiety of the proceeds to the Treasurer, of the county, for the use of the county and the other moiety to the person who seized and prosecuted for the same: *Provided always nevertheless*, that nothing in this section contained, shall be deemed or construed to extend to any vessel, the crew of which or any part thereof may in the pursuit of a lawful voyage stop within the limits aforesaid for the purpose of taking any clams, oysters or terrapins for their own immediate use only.

Proviso

3 Penalty on resisting of officers, &c.

Sect. 3. If any person or persons on board of any such canoe, flat, scow, boat or other vessel aforesaid, shall refuse and not suffer to enter or resist before or after entering, any of the said officers, or otherwise resist them or any of them in the execution of their office, then every person so offending shall forfeit and pay thirty dollars to be recovered with costs by action of debt by such

officer in any court of record in this State having cognizance of that sum, the one moiety to the use of such prosecutor, and the other moiety to the Treasurer of the county for the use of the county where the offence was committed.

Sect. 4. Nothing contained in this Act shall be taken or construed to extend to the State of Maryland, or any citizen thereof, so long as the shell fisheries of the waters of that State shall remain free to the citizens of this State and no longer.

4 not to extend to Maryland, &c.

*Passed at Dover, February 12, 1812.*

## II.

AN ACT to regulate the use of gill-nets or gill-seins in the river Delaware, to impose a tax thereon and to provide for the payment of the same. 1829

Section 1. 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-sein 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-sein, 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.

5 Gill-nets, &—seins prohibited in the river Delaware, unless license

Sect. 2. 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-sein 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 licence shall not authorize or entitle the person or persons obtaining it to use more than one gill-net or gill-sein, which shall be of the dimensions specified therein; and any person or persons, who by color of such license shall use or employ more than one gill-net or gill-sein or who shall use or employ a gill-net or gill-sein 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.

6 penalty for using without license

Sect. 3. A tax or duty of five dollars shall be imposed on a license for the use of every gill-net or gill-sein 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-sein, 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-sein, for the use of which

Tax

7 Oath of person applying for license



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.

8 Secretary of State to distribute licenses

Sect. 4. The Secretary of State shall cause to be printed in proper form a license for the use of gill-nets or gill-seins 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 distributed 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 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 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.*

9 Clerks of the Peace—to account, &c.

10 Neglect of office

—o—

## FLOUR.

### I.

#### AN ACT to prevent the exportation of flour not merchantable.

1796

Whereas it is the duty and interest of all governments to prevent frauds, and promote the interest of just and useful commerce.

1 Flour-casks how made

2 dimensions

3 brands

4 manner of branding

Section 1. All flour casks shall be made of good seasoned materials, well made and tightened with ten hoops, sufficiently nailed with four nails in each chine hoop and three nails in each upper bilge hoop, and of the following dimensions viz. the staves of casks No. 1, 2, and 3 shall be of the length of twenty-seven inches, but different diameters at the heads according to the numbers; *That is to say*; cask No. 1 shall be of the diameter of eighteen inches at each head; cask No. 2 shall be of the diameter of sixteen inches and an half at each head; cask No 3 shall be of the diameter of fifteen inches and an half at each head; and cask No. 4, commonly called half barrels, shall be of the length of twenty-three inches and of the diameter of twelve inches and an half at each head; and every miller or bolter of flour for transportation out of this State shall provide and have a distinguishable brand mark; and the said miller or bolter of flour shall with his said mark brand each and every cask of flour, before the same shall be removed from the place where it was bolted; and every miller or bolter shall also brand every cask of flour according to the respective lengths and diameters above specified, with the said numbers 1, 2, 3 or 4, and with the weight respectively, under the penalty of twenty cents for every barrel of flour not branded, hooped and nailed as aforesaid.

Sect. 2. The said millers or bolters shall put in the cask No. 1 the full quantity or weight of two hundred and twenty-four

pounds of flour, in the cask No. 2 the full quantity or weight of 5 quantity in one hundred and ninety-six pounds of flour, in the cask No. 3 the full each cask quantity or weight of one hundred and sixty-eight pounds of flour, and in the cask No. 4 the full quantity or weight of ninety-eight pounds of flour; and if any miller or bolter of flour shall use or pack with flour, any other casks than of the four several sizes and dimensions aforesaid, he shall forfeit to the purchaser thereof the value or charge of such cask, in his account; and if any miller or bolter shall pack any casks of the said sizes or dimensions with a less quantity of flour, than is above specified for the same respectively, he shall forfeit, for every pound so wanting in weight the sum of ten cents to be paid into the hands of the Inspector.

6 penalty for less quantity

Sect. 3. If any person or persons shall offer any flour for sale or transportation out of this State, which shall be packed in casks made of unseasoned materials or which shall differ from the dimensions set forth in the first section of this Act, he, she or they shall forfeit and pay into the hands of the Inspector for each cask the sum of forty cents: and the owner or possessor of such flour shall have his remedy against the miller or cooper, who has furnished the same, for the damages which he has or may sustain.

7 casks of improper materials or dimensions

penalty

Sect. 4. All wheat flour bolted for sale or transportation out of this State shall be made merchantable and of due fineness without any mixture of coarser or other flour.

8 Flour-- quality

Sect. 5. The Inspector or his deputies respectively upon suspicion or upon the request of the buyer shall and are hereby required to unpack any such cask of flour as aforesaid; and if there shall be a less quantity of flour therein, than is above directed, then the miller or bolter shall pay the charges of unpacking and repacking, over and above the penalties aforesaid; but otherwise the said charges shall be paid by the Inspector or the purchaser if the trial be made at his request.

9 Inspector may unpack

10 at whose charge

Sect. 6. All casks, wherein flour shall be packed, shall be weighed and the tare marked thereon: and if any person shall put a false or wrong tare on any cask of flour to the disadvantage of the purchaser, he shall forfeit and pay to the Inspector for every cask so falsely tared, the sum of one dollar.

11 Tare marked on casks

12 false mark

Sect. 7. All flour exported or intended to be exported from this State, which shall be branded or otherwise marked as superfine, shall, before it shall be laden on board of any ship or vessel for exportation, be inspected and examined by the proper officer appointed for the inspection of flour, or his deputy.

13 Flour inspected before laden for exportation

Sect. 8. The said Inspector or his deputy shall try and search the same by boring the head and piercing it through with a proper instrument not exceeding three quarters of an inch in diameter in order to prove, whether it be honestly and well packed as also to judge of the goodness thereof; and if the said Inspector or his deputy, shall judge the same to be of sufficient fineness in all respects to pass and be exported as good superfine flour of the proper merchantable standard, the said Inspector shall plug up the hole with a plug whereon shall be stamped the letters S. D.; but if said Inspector or his deputy shall adjudge any such flour, having thereon the brand of superfine to be inferior to the standard quality, which shall entitle it to be shipped and exported as superfine, he shall be,

14 duty of inspector--trying flour

15 branding superfine

- and he is hereby authorized and directed to cut out and totally destroy such superfine brand mark; but the same shall be plugged up, as before directed for superfine; and such flour so scraped or the superfine brand obliterated, shall be deemed and taken as merchantable common flour; and if the said Inspector or his deputy shall adjudge any flour made of wheat, whereon is impressed the superfine or other distinguishable brand mark denoting common flour, not to be of sufficient fineness for the standard of superfine or common flour, he shall and he is hereby authorized and directed to condemn the same as unfit for exportation, and shall omit plugging the same as in other cases, but shall draw a circle with red chalk on the head thereof with lines across at right angles, which shall be deemed and taken as the lawful mark of condemnation for all flour tried and inspected within this State: and the said Inspector shall receive for each barrel so inspected and passed or condemned as aforesaid, one cent per barrel and no more.
- Sect. 9.** Where any dispute shall arise between the said Inspector or his deputies with the owners or possessors concerning the fineness or goodness of such flour or of the goodness of the materials of which the casks are made, then upon application made by the owners or possessors of such flour to one of the Justices of the county where the dispute shall arise, the said Justice shall issue his summons to three indifferent and judicious persons to be triers thereof, directing the said triers to view and examine the said flour and make report to him forthwith, touching the condition thereof; and the said Justice shall thereupon give his judgment agreeable to the report of the said triers; and in case the said Justice adjudge the same not to be merchantable, he shall award the owner or possessor thereof to pay each of the said triers fifty cents besides other reasonable costs; but in case the said flour shall be found merchantable, the said Inspector shall be adjudged to pay all the costs which shall have accrued and fifty cents to each of the said triers; and the said officer shall pass such flour as merchantable.
- Sect. 10.** All flour of wheat commonly called midlings, which shall be brought to any port within this State for exportation, shall be packed in casks of good seasoned materials, of the like dimensions and hooped, nailed, and branded with the brand of the miller or bolter and with the number of the cask and the weight of the flour therein in like manner, as casks in which superfine flour is packed, and under the like penalties and forfeitures, as are herein specified, as to flour called merchantable; and moreover, each cask shall be branded with the word *Midlings* at length before it shall be removed from the mill or bolting house where the same shall have been first packed: And no merchant or other person whatsoever shall lade or ship any such midlings on any ship or vessel for exportation out of this State, before the same shall be offered to the view and examination of the Inspector of the port or place, from whence the same shall be intended to be exported, and before the same shall be inspected, approved and adjudged by the said Inspector his deputy (or three persons to be appointed by one of the Justices in the manner by this Act directed as to merchantable flour) to be of a due degree of fineness to be
- 16 common flour
- 18 condemned (43-44)
- 19 compensation
- 20 disputes concerning the goodness of flour settled
- 21 costs
- 22 Midlings packed, branded
- 23 inspected

exported as middlings; and the said Inspector or his deputy shall try and search the same and plug up the holes in the same manner and shall receive the same reward, as for merchantable flour.

Sect. 11. If the said Inspector or his deputies or the three persons to be appointed by a Justice as aforesaid, shall adjudge and determine, that any such flour, so branded *Middlings*, shall not be of a due fineness and quality to be exported as and for middlings, he or they shall cause the said word *Middlings* so branded, to be scratched out and obliterated; and the owners of such middlings and the person or persons offering or intending the same for sale or exportation shall pay for the inspection thereof, the same reward as if the same had been adjudged to be fit for exportation.

24 If of inferior quality—brand scratched

Sect. 12. If any person or persons whatsoever shall impress or brand the said mark of superfine, common or middlings on any cask or casks of flour, after the same shall have been sent or carried away from the mill or bolting house, where the same shall have been packed or bolted and before it shall have been inspected and allowed as superfine, common, or middlings by the proper officer as aforesaid, and shall be thereof legally convicted, such person or persons shall forfeit and pay twenty cents: And if any person shall wilfully impress or cause to be impressed the brand mark of superfine, common, or middlings or the similitude thereof on any cask of flour after it shall have been inspected as aforesaid, or shall wilfully and fraudulently ship or attempt to ship or put on board any ship or vessel for exportation, any flour, the cask whereof shall bear the said mark or brand of superfine, common, or middlings, knowing the same to be of inferior quality or with design to evade the regulation hereby intended; every such person being legally convicted of any such offence or offences shall forfeit and pay the sum of one hundred dollars for every such offence; and every cask of flour so fraudulently branded or so fraudulently shipped or intended to be shipped as aforesaid shall moreover be seized and forfeited, one half for the use of the State and the other half to the Inspector or other person who shall prosecute such offender to conviction.

25 Frauds in branding

penalty

penalty

forfeiture

Sect. 13. The said Inspector or his deputy shall not directly nor indirectly vend, barter, sell, exchange or trade in flour, under the penalty of one thousand dollars, and shall be disabled from acting thereafter in their respective offices.

26 Inspector or deputies not to trade in flour

Sect. 14. All and singular the fines, forfeitures and charges mentioned in this Act, and not herein before provided for the recovery thereof, shall, where the same doth not exceed thirty-two dollars, be recovered as debts under thirty-two dollars are recoverable, and when the sum shall exceed thirty two dollars, may be sued for and recovered in any court of law within this State; and the sum so recovered shall be paid, one half to the person or persons suing for the same, and the other half to the State Treasurer for the use of the State.

27 Suits for fines

Sect. 15. Nothing in this Act shall extend or be construed to extend to affect the transportation or exportation of flour from this State to any other State in the United States; nor shall any Inspector have power and authority to inspect any flour in any part of this State, except in the county of New-Castle, unless particularly

28 Cases not within this Act

requested to do the same by the owner or purchaser of such flour ; any thing in this Act to the contrary notwithstanding.

29 Governor  
to appoint  
flour trier

Sect. 16. The Governor shall appoint some suitable person as trier of flour, who shall reside in the borough of Wilmington, who shall from time to time and at all times, when occasion shall so require appoint one or more deputies ; and in case of the death, resignation, or removal out of the borough of Wilmington of any flour trier, the Governor shall appoint some other fit person as flour trier in his stead ; but before any Inspector or deputy Inspector of flour shall act in his said office, he shall take an oath or affirmation, before some Judge or Justice of the Peace within this State, *faithfully and impartially to perform the trust reposed in him, as flour trier or deputy flour trier, as the case may be, agreeable to the directions of this Act to the best of his skill and knowledge.*

30 his oath

31 Justices to  
receive & pay  
over forfei-  
tures, & make  
returns

Sect. 17. All Justices of the Peace, before whom any of the forfeitures in this Act mentioned shall or may be recovered, are hereby required to receive, to and for the use of the State, all sums of money forfeited to the State and pay over the same to the State Treasurer and transmit annually an account thereof to the Auditor of accounts, or Secretary, to be by him laid before the General Assembly, under the penalty of thirty-two dollars for every neglect or refusal, to be recovered and applied as is herein before directed ; and the sheriff of each county is hereby authorized to receive, to and for the use of the State, all sums of money recovered by any person or persons under this Act in either of the courts of this State and pay the same to the State Treasurer and transmit an account thereof as is herein before directed, and one hundred dollars shall be forfeited for every neglect or refusal, to be recovered and applied as aforesaid.

penalty

32 Sheriffs to  
do the like  
duty

penalty

33 deputies

Sect. 18. The inspector shall appoint two suitable persons at least deputy inspectors ; and every inspector or deputy inspector shall, when required by any person who shall bring on board any vessel within ten miles of the ports of Wilmington, New-Castle and Port Penn respectively above fifty casks, go on board the said vessel and inspect the flour on board ; and thirty dollars shall be forfeited for every neglect or refusal, to be recovered and applied as is herein before directed.

34 duty to go  
on board ves-  
sels

35 continu-  
ance in office

Sect. 19. Each Inspector shall continue in office for and during three years, but may be removeable by the Governor at any time ; and in case of removal his deputies are *ipso facto* removed likewise.

Passed February 9, 1796.

## II.

1804 A SUPPLEMENT to an Act, entitled "An Act to prevent the exportation of flour not merchantable."

36 Flour--rye  
or indian--ex-  
ported from  
Newcastle  
county, ex-  
cept for Phil-  
adelphia  
(4 46)

Section 1. All flour made of rye or indian-corn, which shall be brought to any port or place within the County of New-Castle for exportation to any port or place other than the city of Philadelphia, (a) shall be packed in strong tight hogsheads made of good seasoned white oak, bound and tightened with sixteen good and sufficient

hoops and well secured with not less than four nails in each chine hoop and three wooden pegs or plugs at the upper edge of each upper bilge hoop, and to be of the following dimensions, to wit; the staves to be of the length of forty-one inches and the diameter at the bung or bilge to be thirty-one inches and to contain eight hundred pounds nett weight: or otherwise to be packed in casks made, hooped, nailed, branded and marked in like manner (except as to cask No. 1. and except as to the brand expressing the quality thereof) as in and by the said Act, to which this is a supplement, is directed and specified with respect to merchantable flour and under the like penalties and forfeitures. And moreover each cask and hogshead shall be branded with the words "Fine Rye Flour," "Rye Flour," or "Kiln dried Corn Meal" at length, as the contents may be, together with the name or names of the manufacturer or manufacturers, in a fair and a distinguishable manner, before it leaves the mill or bolting house where the same shall have been first packed, with the addition of No. 1. 800, and the tare marked upon each hogshead.

packed in  
Hogsheads  
37 make and  
dimensions

(4)

38 branded

Sect. 2. No merchant or other person whosoever shall lade or ship any flour made of rye or indian corn on board of any ship or vessel for exportation from the county of New-Castle (except to the city of (a) Philadelphia) before the same shall be offered to the view and examination of the Inspector of the port or place from whence the same shall be intended to be exported, and before the same shall be inspected, approved and adjudged by the said Inspector or one of his deputies or by the three persons to be appointed by one of the magistrates in the manner directed by the Act, to which this is a supplement; and the said Inspector or his deputy shall try and search the same and plug up the holes he shall make therein in the same manner and shall have the same reward for every cask, as by the said Act is directed concerning merchantable flour and the sum of three cents for every hogshead so by him inspected.

39 not to be  
exported be-  
fore in pected

(u & N. York  
as to indian  
meal-15)

(13-20)

40 Compens-  
ation to In-  
spector  
(19-21)

Sect. 3. If the Inspector or his deputies or the three persons to be appointed by a magistrate as aforesaid shall adjudge and determine, that any such flour of rye or indian-corn (which shall be so branded) shall not be of a due fineness and of a quality in all respects fit to be exported as merchantable, he or they shall cause the words "Fine" in the brand of fine rye flour, the words "Rye Flour," or "Kiln dried Corn Meal," so branded, as the case may be, to be scratched out, and obliterated: and the person or persons offering or intending the same for sale or exportation shall pay for the inspection thereof the same reward, as if the same had been adjudged to be fit for exportation.

41 If of infe-  
rior quality—  
scratched

Sect. 4. All and every the regulations, fines, penalties and forfeitures in and by the Act, to which this is a supplement, made, imposed and inflicted on any person or persons, who shall grind, bolt, make casks for, pack, brand after the same shall have left the mill or bolting-house, transport, export, or otherwise have any thing to do with common or superfine flour, shall extend to and be construed to extend to such person and offences in the case of flour made of rye or indian-corn, as fully and effectually as if the articles, "Fine Rye Flour," "Rye Flour," and "Kiln dried Corn Meal," were inserted with flour in the said Act, or as if the said regula-

42 regulations  
&c. of prevail-  
ing Act adop-  
ted (1)  
(6-21, 25, 27,  
41)

tions, penalties, and forfeitures were herein repeated: And all and singular the said fines, forfeitures and penalties imposed and directed by this Act to be levied as aforesaid, shall be sued for, recovered and applied in the same manner, by the same persons, and to and for the same uses, as directed in and by the Act, to which this is a supplement, in the case of merchantable flour.

43 Adulterated flour condemned and forfeited

Sect. 5. If in any flour in casks, branded, "Superfine," or "Common," be brought to any port or place within the county of New-Castle, for exportation to any port or place other than Philadelphia, and shall be found on Inspection, to contain any part or proportion of indian corn-meal or be otherwise mixed and adulterated; all and every such cask or casks so found to be mixed or adulterated shall by the inspector appointed agreeably to the law, to which this is a supplement, or his deputy be condemned and seized and shall be forfeited to the use of the State; and each and every cask so condemned shall by the said Inspector or his deputy be marked on the head thereof with a circle in black paint, with lines crossing the same at right angles.

44 marked

45 condemned flour sold

Sect. 6. The said Inspector shall, as soon as conveniently may be after seizure and condemnation of any flour as aforesaid and after ten days notice given thereof and of the time of sale in some one or more public news-papers, sell the same by public vendue to the highest bidder; and upon sale being so made thereof (after deducting the charges of sale and of portorage, storage, and inspection with two and an half per centum for his trouble therein) the said Inspector shall pay over the monies arising from such sales, unto the Treasurer of the State, within thirty days thereafter.

44 disputes

Sect. 7. In case any dispute should arise between the said Inspector or his deputy and the owner or possessor of any flour, "Fine rye flour," "Rye flour," or "Kiln dried corn meal," inspected as aforesaid, concerning the goodness or quality of the same or respecting the materials whereof the casks are made, the same shall be adjudged, settled and determined in the same manner and form, as is prescribed and directed by the ninth section of the Act, to which this is a supplement, for the cases therein mentioned.

(20-21)

*Passed at Dover, January 26, 1804.*

1809 **AN ADDITIONAL SUPPLEMENT** to an Act, entitled, "*An Act to prevent the exportation of flour not merchantable.*"

45 Indian meal for N. York  
(36)

All indian corn meal manufactured within the county of New-Castle shall upon shipment therefrom for the city of New-York in the State of New-York, be subject to the same regulations as are provided for the exportation of the like article to the city of Philadelphia, and none other, any thing to the contrary notwithstanding contained in any Act or supplementary Act of the General Assembly of this State.

*Passed at Dover, January 25, 1808.*

# FORCIBLE ENTRY & DETAINER.

283

AN ACT concerning forcible entries and detainers, and also concerning tenants holding over their terms after notice to quit. 1827

Section 1. 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 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. 1 Forcible entry 2 detainer

Sect. 2. 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: 3 Cognizance

\_\_\_\_\_ 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 [\_\_\_\_\_ 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 summon 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 defendant's 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 \_\_\_\_\_. 4 Warrant

\_\_\_\_\_ (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 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," 5 Warrant for forcible detainer

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 5 Limitation



## FORCIBLE ENTRY &amp; DETAINER.

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.

6 Verdict  
(29)

forcible entry

Sect. 3. 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:

*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:*

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.*

7 Verdict for  
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.

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

9 execution  
(34-35)

10 Title not  
in question

Sect. 4. On a trial of forcible entry or detainer the estate or merits of the title shall not be inquired of; but the possession and the forcible entry or detainer only shall be in question: and 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.

11 Landlord's  
possession by  
tenant

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.

12 Notice to  
quit

Sect. 5. 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.

13 Landlord  
vs. tenant  
holding over

14 Warrant  
(15) (27)  
(25)

\_\_\_\_\_ 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 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.)

15 Statements  
in special cases

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;—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.*

16 Demise—  
Allegations of  
(17)

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.

17 Evidence  
of

[Landlord &  
Tenant 50]

Sect. 6. 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.

18 Estate 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.

19 Lease by  
tenant for life  
notice, &c. by  
reversioner &c

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.

20 Notice to  
quit by lessor  
tenant for life  
incident to re-  
version, &c.

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.

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 show some right or authority in himself to continue in the possession through or by means of such lease or alienation.

21 Trial—  
what may be  
disputed

Sect. 7. 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. :

22 Verdict  
for plaintiff  
(29)

*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*

[25]

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.

23 Judgment

24 Execution  
[34]

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.

25 Damages  
not to exceed  
50 dollars

26 waived in  
this proceed-  
ing—  
at suit for

Sect. 8. 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

27 date, re-  
turn and ser-  
vice of war-  
rant

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.

28 day of trial, adjournment &c.

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.

29 Oath of jurors

Sect. 9. 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.

30 proceeding, defendant absent

31 Defect of jurors 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.

The allegations and proofs shall be made and exhibited to the jurors, under the superintendence 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.

31 Verdict for defendant, judgment & execution

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.

32 Witnesses Subpoena

Sect. 10. In any proceeding under this Act, the Justices or either of them shall have power to issue subpoenas 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 subpoena shall neglect to appear according to such subpoena, 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

attachment

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

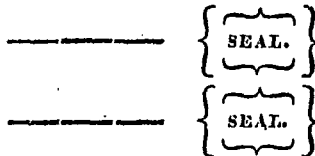
33 Discretion concerning costs

Section 11. 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.

34 Execution

\_\_\_\_\_ 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 \_\_\_\_\_*



In 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.

35 Forcible entry or detainer

The damages with all the items of the costs shall be indorsed 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.

36 Further execution

(Justices of the Peace 1833)

Sect. 12. 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

37 Jurors refusing to serve

## FORCIBLE ENTRY &amp; DETAINER.

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.

38 Sheriff or coroner to attend trials under this Act

39 consequence of neglect

Sect. 13. 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 recognizance or bond given by such sheriff, coroner or other officer.

40 Entries of proceedings

Sect. 14. 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.

41 formal defects

42 Certiorari no supersedeas

43 Restitut'n discretionary

Sect. 15. 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.

44 Fees

Sect. 16. 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 subpoena 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."

[Justices of the Peace 181]

*Passed at Dover, February 2, 1827.*

# FUGITIVES FROM LABOR.

291

## AN ACT relating to fugitives from labor.

1826

Section I. When a person held to labor or service in any of the United States or in either of the territories thereof, under the laws thereof, shall escape into this State, the person to whom such labor or service is due, his or her agent or attorney is hereby authorized to apply to any Judge or Justice of any court of record or to any Justice of the Peace or to any burgess of a borough or town corporate, who on such application supported by the oath or affirmation of such claimant, agent or attorney, that said fugitive hath escaped from his or her service or from the service of the person for whom he is agent or attorney, shall grant his warrant under his hand and seal and directed to any sheriff or constable, authorizing and empowering said sheriff or constable to seize and arrest the said fugitive, who shall be named in said warrant, and to bring said fugitive before said officer issuing said warrant or before some other Judge or Justice of a court of record or some Justice of the Peace or burgess of a borough or town corporate; which said warrant shall be in the form or to the effect following, viz :

1 Slaves from other States &c arrested, &c. ( Constitution U. S. 53)

2 Warrant

*State of Delaware, county ss. To the sheriff or any constable of said county :—This is to authorize and require you to seize and arrest the body of said to be the slave (or servant, as the case may be) of and him (or her) to bring forthwith before me or some Judge of said State or Justice of the Peace in and for said county (if in New Castle county add "or some burgess of the borough of Wilmington") to be dealt with as the law directs :*

By virtue of which precept the said fugitive named therein may be arrested by the officer to whom the same is delivered in any part of this State.

Sect. 2. The said fugitive when so arrested shall be brought before the officer in that behalf named and upon proof to the satisfaction of such officer that the person so seized or arrested doth under the laws of the State or territory from which he or she fled owe service or labor to the person claiming him or her, it shall be the duty of such Judge or other officer aforesaid to give a certificate thereof to such claimant, his or her agent or attorney, which shall be sufficient warrant for removing the said fugitive to the State or territory from which he or she fled.

3 Proceeding

4 Certificate

Sect. 3. If any person or persons shall obstruct or hinder such sheriff, constable, claimant, agent or attorney in so seizing, arresting or removing such fugitive from labor, or shall rescue or aid or abet the rescue of such fugitive from such sheriff, constable, claimant, agent or attorney, or shall assemble together with the intention to interrupt such sheriff, constable, claimant, agent or attorney in the due execution of this Act, they shall on conviction thereof by indictment forfeit and pay a sum not exceeding five hundred dollars and be imprisoned for a period not less than three months nor more than twelve months, and shall be liable to an action at the suit of the owner of said fugitive for damages.

5 Obstructing &c. arrest

penalty

Sect. 4. If any captain or commander of any vessel or other person shall carry or transport by water or cause to be carried or

6 Transporting slaves ou



of this State,  
by water

penalty

transported by water out of this State any person held to labor or service by any citizen or inhabitant of this State, or by any citizen or inhabitant of any other of the United States or either of the territories thereof and who may have escaped into this State, such captain, commander or other person shall pay to the owner of such person held to labor or service the sum of five hundred dollars to be recovered by an action on the case or on conviction thereof by indictment be subject to a fine not exceeding five hundred dollars and imprisonment not less than three nor more than twelve months, at the election of the party aggrieved, and such election shall be determined by his bringing his action on the case or instituting his prosecution by indictment; and if any negro or mulatto shall carry or transport by water any person held to labor or service as aforesaid, he shall, on conviction thereof by indictment, be punished by fine and imprisonment or by being whipped with thirty-nine stripes, in the discretion of the court.

7 colored persons travelling without pass

Sect. 5. If any suspicious colored person shall be taken up travelling in or through this government without having a sufficient pass signed by some Justice or proper officer of the place from whence he or she came, approved and renewed by some Justice of the Peace in the parts through which such person hath travelled, or shall not otherwise be able to give a good and satisfactory account of him or herself to the justice before whom he or she shall be brought, such person shall, by the said Justice, be committed to the gaol of the county where he or she shall be taken up and be deemed to be and dealt withall, as a runaway servant.

8 Charge to G. Jury at Qr. Sessions

Sect. 6. This Act shall be given in charge to the grand juries, by the Judges of the Court of Quarter Sessions of this State at their respective sessions of said court.

*Passed at Dover, January 19th, 1826.*

—o—

## GENERAL ASSEMBLY.

### I.

1779 AN ACT empowering the General Assembly of this State to adjourn to, and sit at, any town or place within the same.

1 Place of meeting of the General Assembly (Constitution 30)

Section 2. The General Assembly of Delaware shall hereafter meet and sit yearly forever at the town of Dover, unless after such meeting the said Assembly may see cause to adjourn from the said town of Dover to some other town or place within the State; in such case it shall and may be lawful for the General Assembly of this State, by their resolution, to adjourn to, and sit at, any town or place within the same.

(a) of 1776, superseded by Constitution of 1792

Sect. 4. And whereas by the constitution or system of government of this State, (a) it is provided and directed, that the President or Commander in Chief of the State, with the advice of the Privy Council thereof or on the application of a majority of either

House of the General Assembly, may call the General Assembly, before the time they stand adjourned—.

Sect. 5. In such case the President or Commander in Chief is hereby directed, by and with the advice of the Privy Council, or on the application of a majority of either House of the General Assembly, to call the General Assembly, (b) to meet at the place pointed out by their adjournment, or if no adjournment be made, at the place where the sessions were last held; any law, usage, or custom to the contrary notwithstanding.

2 Place of meeting when call'd by Commander in Chief (b) Constitution 58)

*Passed October 28, 1779.*

## II.

**AN ACT** for raising the sum of one thousand pounds, by a lottery, 1791  
for the use of the State; and for other purposes.

Section 1. It shall and may be lawful for the managers herein after appointed to institute, carry on and draw a lottery for raising the sum of one thousand pounds, clear of all expenses; and the said sum, when so raised, shall be applied to the fitting up and preparing chambers in the new Court House in the town of Dover, for the accommodation and reception of the General Assembly of this State; and the surplusage of the said sum, if any, shall be appropriated to the finishing and completing the said Court House.

3 Lottery for Court House Dover

Sect. 2. The said chambers, when finished and prepared, together with the office at the south-east corner of said Court House, shall be set apart and appropriated to and for the sole use and accommodation of the General Assembly of this State and their officers, so long as and whenever the Legislature shall hold their sessions in the town of Dover.

4 Chambers appropriated for General Assembly

*Passed January 29, 1791.*

## III.

**AN ACT** [for ascertaining the salaries of the Governor and Attorney General,] for fixing the compensation of the members of the General Assembly and their officers. 1821

Section 1. There shall be allowed from and after the first Tuesday in October next, to each of the members of the General Assembly, two dollars and fifty cents, and to the Speaker of each House three dollars, to their clerks respectively, two dollars and fifty cents and to their door keepers each one dollar and twenty-five cents, for each and every day they may respectively be in attendance with an additional allowance of one day to each member, whose residence may be more than fifteen miles from the seat of government of the State, for going to, and one day for returning from, the place where the General Assembly may convene.

5 Compensation to Members (Constitution 37) also to Clerks &c.

*Passed at Dover January 15, 1821.*

## HABEAS CORPUS.

1793  
(Constitution  
13-69)

AN ACT for better securing personal liberty, and easily and speedily redressing all wrongful restraints thereof.

Whereas the security of personal liberty is a principal benefit derived from free constitutions of government; and certain methods should be prescribed, so that all wrongful restraints thereof may be easily and speedily redressed:

1 Application  
in vacation

(10-19)

2 Writ mark'd

3 service

(9)  
5 body of pri-  
soner

6 cause of  
commitment  
&c.

7 if distance  
exceed 20  
miles within  
six days

7 time of de-  
termination  
(Bail-B4)

Section 1. If any person shall be or stand committed or detained for any criminal or supposed criminal matter, unless for treason or felony, the species whereof is plainly and fully set forth in the warrant of commitment, in vacation time and out of term; it shall and may be lawful to and for the person so committed or detained or any one on his or her behalf to appeal or complain to the Chancellor, or any Judge of the Supreme Court or of the Court of Common Pleas: and the said Chancellor or Judge, upon view of the copy or copies of the warrant or warrants of commitment or detainer or otherwise upon oath or affirmation legally made *That such copy or copies were denied to be given by the person or persons in whose custody the prisoner is detained*, is hereby authorized and required, upon request made in writing by such prisoner or any person on his or her behalf attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *habeas corpus* under the seal of the Court of Chancery or such other court whereof he shall then be a judge, to be directed to the person or persons in whose custody the prisoner is detained, returnable forthwith before the said Chancellor or Judge: and to the intent that no officer, sheriff, gaoler, keeper, or other person to whom such writ shall be directed, may pretend ignorance of the import thereof, every such writ shall be marked in this manner, **BY ACT OF THE GENERAL ASSEMBLY, 1793**, and shall be signed by the Chancellor or Judge who awards the same: And whenever the said writ shall by any person be served upon the officer, sheriff, gaoler, keeper or other person whatsoever, to whom the same shall be directed, by being brought to him or by being left with any of his under officers or deputies at the gaol or place, where the prisoner is detained, he or some of his under officers or deputies shall within three days after the service thereof as aforesaid, make return of such writ, and bring or cause to be brought the body of the prisoner unto or before the Chancellor or Judge, before whom the said writ is made returnable, and in case of his absence, before any other of the Judges aforesaid, and shall then likewise specifically and fully certify the true cause or causes of the commitment and detainer of the said prisoner, and when he was committed; unless the commitment be in any place beyond the distance of twenty miles from the place where such Chancellor or Judge shall be residing, and if beyond the distance of twenty miles then within six days; and thereupon the Chancellor or Judge, before whom the prisoner shall be so brought, shall within two days discharge the prisoner from imprisonment, taking his or her recognizance with one or more surety or sureties in any sum according to his discretion, having regard to the circumstances of the prisoner and the nature of the offence, for his or her appearance at the next Court of Oyer and Terminer, and General Gaol

Delivery or General Quarter Sessions of the Peace and Gaol De-  
livery of or for the county where the offence was committed or in  
such other court where it may be properly cognizable, as the case  
shall require; and then shall certify the said writ with the return  
thereof and the said recognizance into the court where such ap-  
pearance is to be made; unless it shall appear to the said Chancel-  
lor or Judge, that the party so committed is detained upon legal  
process, order or warrant for such matter or offence, for which by  
the law the said prisoner is not bailable; and that the said Chan-  
cellor or Judge may according to the intent and meaning of this  
Act be enabled, by investigating the truth of the circumstances of  
the case to determine whether according to law the said prisoner  
ought to be bailed, remanded or discharged, the return may before  
or after it is filed, be amended, and also suggestions made against  
it, that thereby material facts may be ascertained.

8 Proceedings

9 Return a-  
mended and  
suggestions  
against

Sect. 2. In term time it shall and may be lawful for any prison-  
er as aforesaid in manner aforesaid to move and obtain his or her  
*habeas corpus* out of the Supreme Court or the Court of Common  
Pleas, whereupon proceedings shall be had as aforesaid.

10 in term

Sect. 3. If any person shall be committed for treason or felony  
and shall not be indicted and tried some time in the next term, ses-  
sions of Oyer and Terminer and General Gaol Delivery or other  
court, where the offence is properly cognizable, after such commit-  
ment, it shall and may be lawful for the Judges thereof and they  
are hereby required upon the last day of the term, sessions or court  
to set at liberty the said prisoner upon bail; unless it shall appear  
to them upon oath or affirmation, *That the witnesses for the State,*  
*mentioning their names, could not then be produced;* and if such  
prisoner shall not be indicted and tried the second term, sessions or  
court after his or her commitment, or upon trial shall be acquitted,  
he or she shall be discharged from imprisonment.

11 Persons  
committed for  
treason or fe-  
lony, tried

or discharged

Sect. 4. Nothing in this Act shall extend to discharge out of pri-  
son any person guilty of, or charged with, treason, felony or other  
high misdemeanor in any other State and who by the Constitution  
of the United States ought to be delivered up to the Executive Pow-  
er of such State; and also excepting persons imprisoned by the  
authority of the United States.

12 Fugitives  
from justice  
excepted  
[Constitution  
U. S. 52]

Sect. 5. Nothing in this Act shall extend to discharge out of  
prison any person charged with debt or with other action or with  
process in any civil cause; but after discharge for such crim-  
inal or supposed criminal matter, he or she shall be kept in custo-  
dy, according to law, for such other suit.

13 imprison-  
ment for debt  
or in civil  
suits not af-  
fected

Sect. 6. If the Chancellor or any Judge aforesaid being appeal-  
ed or complained to as aforesaid upon view of the copy or copies of  
the warrant or warrants of commitment or detainer or upon oath  
or affirmation made *That such copy or copies were denied as aforesaid,*  
shall refuse or neglect to award any writ of *habeas corpus* by this  
Act required to be granted; he shall forfeit to the prisoner or par-  
ty grieved the sum of thirteen hundred dollars to be recovered by  
the said prisoner or party grieved, his or her executors or adminis-  
trators against such offender, his executors or administrators by  
action of debt, suit, bill or plaint in any Court of Record, where-  
in no essoign, protection, privilege, injunction, wager of law or stay  
of prosecution shall be allowed or any more than one imparlance.

14 Penalty  
on Chancel-  
lor or Judge  
not granting  
Ha. Corp. ac-  
cording to  
this Act

15 Penalty  
for disobeying  
Hab. Corp.

Sect. 7. If any officer, sheriff, gaoler, keeper or other person, to whom any such writ shall be directed as aforesaid or any of his under officers or deputies shall refuse or neglect to make the returns aforesaid or to bring the body of the prisoner according to the command of the said writ, within the respective times aforesaid, all and every such officer, sheriff, gaoler, keeper or other person under officer or deputy, shall be guilty of a contempt of the court, under the seal of which the said writ shall have issued, and shall also for the first offence forfeit to the prisoner or party grieved three hundred dollars, and for the second offence six hundred dollars, and shall and is hereby made incapable to hold or execute his said office; the said forfeitures to be recovered by the prisoner or party grieved in manner aforesaid.

16 Penalty on  
Sh'ff, gaoler,  
&c. for not  
delivering co-  
py of Warrant  
of commitm't  
in 6 hours af-  
ter demand

Sect. 8. If any officer, sheriff gaoler, keeper or other person, to whom such writ shall be directed as aforesaid or any of his under officers or deputies upon demand by the prisoner or some person in his or her behalf shall refuse to deliver or within six hours after demand shall not deliver to the prisoner or person so demanding, a true copy or copies of the warrant or warrants of commitment and detainer of such prisoner, which are hereby required to be delivered; all and every such officer, sheriff, gaoler, keeper or other person, under officer, or deputy so offending shall, for the first offence, forfeit to the prisoner or party grieved three hundred dollars, and for the second offence, six hundred dollars, and shall also be and is hereby made incapable to hold or execute his said office; the said forfeitures to be recovered by the prisoner or party grieved in manner aforesaid.

17 Person li-  
berated on ha-  
beas corpus—  
not imprison-  
ed for same  
cause

Sect. 9. And for preventing unjust vexation by reiterated commitments for the same offence; no person, who shall be delivered or set at large upon an *habeas corpus* shall at any time thereafter be again committed or imprisoned for the same offence by any person or persons whatsoever, other than by the legal order and process of such court, wherein he or she shall be bound by recognizance to appear or other court having jurisdiction of the cause; and if any other person or persons shall knowingly contrary to this Act re-commit or imprison or knowingly procure or cause to be re-committed or imprisoned for the same offence or pretended offence any person delivered or set at large as aforesaid, or be knowingly aiding or assisting therein; then he or they shall forfeit to the prisoner or party grieved, any pretence or variation in the warrant or warrants of commitment notwithstanding, the sum of thirteen hundred dollars to be recovered by the prisoner or party grieved in manner aforesaid.

18 Person  
committed in  
criminal case  
not to be re-  
moved from  
prison, without  
Ha. Corp. un-  
less, &c.  
condemned

Sect. 10. Any person being committed to any prison or in custody of any officer, sheriff, gaoler, keeper or other person or his under officer or deputy for any criminal or supposed criminal matter shall not be removed from the said prison or custody into any other prison or custody unless it be by *habeas corpus* or some other legal writ, or where the prisoner is delivered to the constable or other inferior officer to be carried to some common gaol or where any person is sent by any Judge or Justice having proper authority to some common work-house or house of correction, or where the prisoner is removed from one place to another within the same

county in order to his or her trial or discharge in due course of law, or in case of sudden fire or infection, or other necessity ; and if any person or persons shall after such commitment as aforesaid make out, sign, countersign, obey or execute any warrant or warrants for such removal as aforesaid, then he or they shall forfeit to the prisoner or party grieved six hundred dollars to be recovered by the prisoner or party grieved in manner aforesaid.

Sect. 11. All the provisions herein before made for the awarding and granting writs of *habeas corpus* and proceeding thereon in case of commitment or detainer for any criminal or supposed criminal matter, shall in like manner extend to all cases, where any person not being committed or detained for any criminal or supposed criminal matter shall be confined or restrained of his or her liberty under any color or pretence whatever ; and upon oath or affirmation made by such person so confined or restrained or by any other in his or her behalf of any actual confinement or restraint, and that such confinement or restraint, to the best of the knowledge and belief of the person so applying, is not by virtue of any commitment or detainer for any criminal or supposed criminal matter, an *habeas corpus* directed to the person or persons so confining or restraining the party as aforesaid shall be awarded and granted in the same manner, and under the same penalties to be recovered from the person or persons so confining or restraining, as is herein before directed ; and the Chancellor, Court or Judge, before whom the party so confined or restrained shall be brought, shall after the return made proceed in the same manner, as is herein before prescribed, to examine into the facts relating to the case and into the cause of such confinement or restraint, and thereupon either bail, remand or discharge the party so brought, as to justice shall appertain.

19 extended to all cases of restraint of liberty

20 Proceedings

Sect. 12. Whensoever any writ of *habeas corpus* awarded and granted either in term or vacation time for any person so confined or restrained without a commitment for any criminal or supposed criminal matter, shall be served upon the person or persons so confining or restraining such party by being brought to such person or persons or by being left at the place where the party shall be so confined or restrained, the person or persons so confining or restraining such party shall make return of such writ and bring or cause to be brought the body of such party, according to the command thereof, within the respective times limited and under the provisions herein before prescribed ; and every such person refusing or neglecting so to make return of such writ, or to bring or cause to be brought the body of the party according to the command thereof within the times respectively limited and under the provisions herein before prescribed shall be guilty of a contempt of the court, under the seal of which the said writ shall have issued, and shall also forfeit for the first offence to the party grieved three hundred dollars, and for the second offence six hundred dollars to be recovered by him or her, his or her executors or administrators against the offender, his or her executors or administrators, in manner aforesaid.

21 service of the writ

(3-7)  
22 Persons disobeying it

penalty

Sect. 14. In or upon any action, suit, bill, or plaint for any offence against this Act, the defendant or defendants may plead the general issue and give the special matter in evidence.

23 Can't issue

## I.

1797 AN ACT to prevent infectious diseases being brought into this State, and for other purposes.

Whereas the laws heretofore made to prevent infectious diseases being brought into this State, have not effectually answered the good purposes for which they were intended;

1 Cases, in which Permit necessary for bringing vessel nearer than one mile to any place, &c.

Section 1. No commander, master or other person having charge of any ship, or vessel bound to any port in this State, having on board any greater number of persons than forty or having any persons disordered with any infectious disease (the measles and small pox excepted) or coming from any sickly port or place, shall bring his ship or vessel or suffer or permit the same to be brought nearer to any port or place of landing than the distance of one mile nor shall land or bring on shore nor cause or suffer to be landed or brought on shore at any port or place in this State any such persons or any part of their goods or effects or the goods or effects of any person whatsoever, until he shall have obtained a permit in writing for that purpose from the physician to be appointed in pursuance of this Act, under the penalty of one thousand dollars.

2 Physicians to be appointed

3 their duty

4 Concealment by Master—

penalty

5 Physician refusing Permit, to report

6 Licenses to land infected persons

Sect. 2. The Governor shall appoint one skillful physician in the borough of Wilmington, one in the town of New-Castle, one in the county of Kent, and one in Lewes, and one on or near Nanticoke river in the county of Sussex; whose duty it shall be, upon notice given to any of them by the commander, master or other person having charge of such ship or vessel, to go on board said ship or vessel and diligently inquire and examine as well of the person having charge of said ship or vessel as of the passengers on board, and by searching all parts of said vessel, whether any and what persons on board during the voyage have been or may then be infected with any contagious disease, how many died in the voyage and of what distempers, and what is the present state and condition of the people on board. And if any commander, master or other person having charge of such ship or vessel shall have on board any person distempered with any infectious disease (except as before excepted) and shall knowingly conceal the same or shall not make a just and true discovery to the said physician of the sickly and disordered state of all and every person on board from the time the said ship or vessel departed from her last port to the time of said inquiry, he shall forfeit and pay the sum of one hundred dollars for every such offence.

Sect. 3. In each and every case wherein the physician appointed, as is herein before directed, shall refuse to grant such permit, he shall forthwith make report thereof to the burgesses for the borough of Wilmington, or to two Justices of the Peace or to one Trustee of the Poor and one Justice of the Peace, residing nearest to the place where any such ship or vessel shall lay; which said burgesses or Justices or Trustee of the Poor and Justice are hereby authorized and required, under such regulations as to them shall seem most proper and consistent with the health and safety of the country, under their hands and seals to grant a license to the own-

er or owners or commander of the said ship or vessel, for the landing all or any of such diseased and infected persons, as the said owner or owners or commander shall provide with suitable accommodations without endangering the health and safety of the country; and the said burgesses or Justices are hereby authorized to take and receive for every such license granted as aforesaid, containing the names of twenty persons or upwards the sum of two dollars, and for any less number the sum of one dollar and no more.

7 Fee for license

Sect. 4. If any person or persons shall go on board any such ship or vessel, which shall be found having any infectious disease on board, before the commander or other person having charge of such ship or vessel shall have obtained a permit to land from the physician aforesaid or without a special license from the said physician for that purpose, every such person so offending shall pay the sum of ten dollars for every such offence.

8 Penalty for going on board before Permit granted

Sect. 5. No commander, master or other person having charge of any ship or vessel bound to any port in this State shall bring or import any greater number of passengers and servants, than shall be well provided and supplied with good and wholesome meat, drink and other necessaries particularly vinegar as well to wash and cleanse the vessel as for the use of the persons on board during the voyage; and the room or birth, that shall be allowed to each single freight or person of the age of fourteen years and upwards, shall be at least six feet in length and one foot six inches in breadth, and if under the age aforesaid, shall be at least the same length and breadth for two such persons; and all such rooms or births shall in the fore part of the ship or vessel between decks be of the height of three feet nine inches, and in the cabins and steerage two feet nine inches at least and no more than two whole freight persons shall be put together in one headstead or division; and if any such commander, master or other person having charge of any ship or vessel shall offend in the premises either by not providing and supplying his passengers with the necessaries aforesaid or by not allowing the room and births herein before directed, he shall forfeit and pay the sum of six hundred dollars for every such offence; and the physician herein before mentioned shall, on visiting any such ship or vessel having passengers on board, diligently inquire whether the directions herein before mentioned have been fully complied with; and if he shall find the contrary, he shall, under the penalty of fifty dollars, forthwith report the same to some Judge of the Supreme Court or of the Court of Common Pleas or to some Justice of the Peace, who shall thereupon issue his warrant for apprehending the said offender and take sufficient surety for his appearance at the next Court of Quarter Sessions, and if he shall fail in finding such surety, commit his body to the gaol of the county.

9 No greater number of passengers than can be well provided for &c.

10 Dimensions of births

11 Penalty for contravening these regulations (31)

12 Physician to inquire

13 proceeding if Master found delinquent

Sect. 6. The physician, who shall visit any ship or vessel, and discharge the duties by this Act enjoined and required, shall receive for his trouble ten dollars for each vessel, to be paid by the commander, master, owner or factor thereof.

14 Physician's fee

Sect. 8. One moiety of the fines and penalties mentioned in this Act shall be for the use of the Trustees of the Poor for that county

15 Appropriation of penalties



in which suit shall be brought for all or any of the said fines or penalties; and the other moiety thereof to the use of him or her who will sue for the same by action of debt, bill, plaint, or information.

*Passed January 24, 1797.*

## II.

1799 **A SUPPLEMENT** to the Act, entitled, *An Act to prevent infectious diseases being brought into this State and for other purposes.*

16 Power to regulate intercourse with places, in which infectious disease prevails  
[18-19-29]

a (29-30)

17 Quarantine

18 intercourse by land suspended  
[19]

Section 1. The burgesses and assistants, by and with the advice of the health officer of the borough of Wilmington, one Justice of the Peace and the commissioners of the town of New-Castle, and two Justices of the Peace or one Justice of the Peace and a Trustee of the Poor in any other part or district of this State, are hereby respectively authorized and empowered at all times hereafter as often, as they shall receive or obtain information of the existence or prevalence of an infectious or contagious disease in any foreign port or place or any port or place in the United States, to make known to the citizens and other inhabitants of the borough, town or district by proclamation the existence or prevalence of such infectious or contagious disease and thereby order and direct, that no ship or vessel bound from, or that may have touched at, any of the said infected ports or places shall from and after the publication of such proclamation in the said borough, town, or district in this State, be brought or approach nearer to the said borough than the mouth of (a) Christiana creek after the publication of such proclamation, or to the port or place of landing in the said town or district than the distance of one mile after the publication of such proclamation in the said town or district, and that no person or persons be landed or put on shore or be suffered nor permitted to be landed or put on shore nor any goods or merchandises be landed or unladen or suffered or permitted so to be from on board such ship or vessel after publication of the proclamation as aforesaid; and the master or other person having the charge or command of the said ship or vessel and all persons on board the said ship or vessel shall be subjected and submit to the performance of such quarantine and other cautionary and preventive measures, as the said burgesses and assistants, by and with the advice and consent of the health officer of the said borough for the said borough, and the said Justice of the Peace and the commissioners together with the health officer of the town of New-Castle for the said town, and two Justices of the Peace or one Justice of the Peace and Trustee of the Poor for any other part or district in the State, shall at any time or times prescribe or enjoin the observance of for the purpose of guarding against the introduction of any infectious or contagious disease, that may exist or prevail in any ports or places as aforesaid.

Sect. 2. Immediately from and after the publication of the said proclamation the burgesses and assistants or a majority of them, by and with the advice and consent of the health officer of the said borough, for the said borough, one Justice of the Peace and the

commissioners of the town of New-Castle or a majority of them for the said town, and two Justices of the Peace or one Justice of the Peace and a Trustee of the Poor for other parts or districts in this State, shall be and are hereby vested with full power and authority to suspend altogether the intercourse by land between any cities, towns or places in the United States or elsewhere during the existence or prevalence of any infectious or contagious disorder, and the said borough, town or other part or district in this State, or to impose such regulations and restrictions thereon, as may be deemed best calculated to prevent the introduction of any such infectious or contagious disease and most conducive to the safety and health of the inhabitants.

Sect. 3. If any ship or vessel shall be brought within the respective distances aforesaid or goods, wares or merchandises landed from such ship or vessel in contravention of the provisions of this Act, or the regulations or restrictions, that may at any time be adopted in pursuance of the authority hereby delegated; the master or commander thereof and owner and consignee and all persons on board the said ship or vessel, who shall contravene the said provisions, regulations or restrictions, shall respectively forfeit and pay the penalty of five hundred dollars, each.

19 Regulations violated by Masters of vessels or  
[31]

Sect. 4. All persons owning or having the charge of any carriage, for the conveyance of persons, goods, merchandise or chattels, and travelling horses, shall forfeit and pay the sum of three hundred dollars respectively, for each and every act done in contravention or violation in any respect of the before recited restrictions or regulations.

by owners of carriages  
[32]

Sect. 5. All owners, masters, captains or consignees as well as the ships or vessels, and all owners of carriages of whatsoever sort and travelling horses and the carriage and horses shall be and are hereby declared to be bound for the forfeitures and penalties under this Act or the Act, to which this is a supplement; and the said ships or vessels, carriages and horses shall and may be attached, seized, and detained by virtue of a precept to be issued for that purpose by any Judge of the Supreme Court or Court of Common Pleas of this State, who is hereby authorized and empowered upon application to him made by the physician appointed by virtue of the Act, to which this is a supplement, for the borough of Wilmington or by the burgesses of the said borough, or by the physician appointed as aforesaid for the town of New-Castle, or by the commissioners of the said town, or by the physician appointed as aforesaid or by a Trustee of the Poor in any other part or district of this State, to issue the said precept to be directed to the sheriff of any county within this State or to any constable of any county, borough, or town within the same, (who is hereby authorized and directed to serve the same) commanding him forthwith to attach, seize and detain such ships or vessels, carriages or horses; of which said attachment, seizure and detention, due notice shall be given in writing to the owner, consignee or other person having the charge or care of such ships or vessels, carriages or horses, by the said sheriff or constable; and unless good and sufficient bail to the value of the same be given to all and every writ or writs duly and regularly taken out and issued forth for the recovery of all

20 Liability & remedy for penalties

- and every of the forfeitures and penalties, which may or shall be incurred under or by virtue of this Act or the Act, to which this is a supplement, for or by reason of such ships or vessels, carriages or horses having been used in contravention of the provisions, regulations and restrictions, ordained and directed by, or which may be adopted agreeably to, this Act or the Act, to which this is a supplement, within one month after such due notice given as aforesaid, then and in that case it shall and may be lawful for the said Judge upon a further application to him made by the said physician, burgesses, commissioners or trustee for that purpose, and he is hereby authorized and empowered to proceed to inquire in a summary way, what penalties or forfeitures have been incurred as aforesaid, for which such ships or vessels, horses or carriages are liable as aforesaid; and if upon such inquiry as aforesaid it shall appear to the satisfaction of the said Judge, that any forfeitures or penalties have been incurred as aforesaid, for which the said ships or vessels, horses or carriages are liable as aforesaid, and for the recovery of which any writ or writs have been duly and regularly taken out and issued forth, and that due notice has been given as aforesaid of the attachment, seizure and detention of the said ships or vessels, horses or carriages, the said Judge is hereby authorized and empowered to give judgment, that the same be forfeited and to issue his precept to the said sheriff or constable, commanding him upon such public notice being first given of the time and place of sale, as the said Judge shall deem just, reasonable and proper, to make sale of such ships or vessels, horses or carriages, at public vendue or auction, and to pay with the proceeds of such sale, such penalties or forfeitures incurred as aforesaid, for which the said ships or vessels, horses or carriages are liable as aforesaid, and for which any writ or writs have been duly and regularly taken out and issued forth as aforesaid, and which have been determined upon such inquiry as aforesaid by the said Judge together with reasonable costs to be taxed by the said Judge: *Provided always*, that if the proceeds of such sale as aforesaid should not be sufficient to satisfy all such penalties and forfeitures incurred, sued for and determined as aforesaid, then the said sheriff or constable shall apply the amount of the proceeds in his hands, after deducting in the first place such reasonable costs taxed as aforesaid, to the payment of such forfeitures or penalties in equal parts or proportions. *And provided further*, if there should be any surplus remaining in his hands after the payment of all the forfeitures and penalties incurred, sued for and determined as aforesaid, then the said sheriff or constable is hereby directed to pay the same to the owner, consignee, or other person having the charge or care of such ships or vessels, horses or carriages as aforesaid.
- 21 judgment
- 22 Vessel, &c. sold at public vendue
- 23 application of proceeds [2\*]
- 24 Limitation
- 25 Health officer to appoint deputy
- Sect. 6. All actions or prosecutions to be commenced against any master, captain, owner, or consignee of any ship or vessel or other person by virtue of this Act or the Act, to which this is a supplement, shall be brought within six months next after the offence was committed.
- Sect. 7. The health officers aforesaid and any health officer, that may have been or shall be appointed in any other part of this State under and by virtue of the Act, to which this is a supplement, shall

be and are hereby respectively authorized and required to appoint by writing under their hands a deputy or deputies to perform the duty of health officer enjoined or directed by this Act or the Act, to which this is a supplement, in case of the sickness, absence from home or inability on the part of such health officer to perform the said duties; and the said health officer, who may appoint a deputy or deputies as aforesaid, shall be responsible for any misconduct of the said deputy or deputies in the performance of the said duties.

Sect. 8. All civil officers of this government are hereby authorized and required on request being made to aid and assist in the execution of the powers and duties enjoined by this Act and the Act, to which this is a supplement; and if it be deemed necessary by the persons entrusted with the execution of the provisions of this Act or the Act, to which this is a supplement, they may command and have the aid and assistance of the *posse comitatus* for the purpose.

26 All civil officers to aid

Sect. 9. All forfeitures and penalties, which may hereafter be incurred under or by reason of this Act, or the Act, to which this is a supplement, shall be sued for and recovered in the name of the State of Delaware with costs of suit, if incurred at the borough of Wilmington or the town of New-Castle by the physicians of those ports or places respectively appointed by virtue of the Act, to which this is a supplement, or by the burgesses of the borough of Wilmington or by the commissioners of the town of New-Castle respectively, and if incurred in other parts or districts of the State, in which there is no such physician, by a Trustee of the Poor; and in all cases of suits for penalties under this Act the parties sued shall give special bail as in other cases, in which special bail is by law required; and three fourths of the fines and penalties mentioned in this Act or the Act, to which this is a supplement, shall be for the use of the Trustees of the Poor for that county, in which such suit shall be brought for all or any of the said fines or penalties, and the other one fourth thereof to the use of the physician, burgesses, commissioners or Trustee of the Poor, who are hereby empowered and directed to sue for the same.

27 Suits in name of the State

28 Appropriation

### III.

A FURTHER SUPPLEMENT to the Act, entitled, "*An Act to prevent infectious diseases being brought into this State, and for other purposes.*" 1899

Section 1. So much of the first section of the said Act, as relates to all vessels being stopped, detained and not suffered to approach nearer to the borough of Wilmington than the mouth of Christiana creek, shall be considered as applying only to vessels bound to the port of Wilmington; and all vessels bound further up the creek than Wilmington shall not be stopped or interrupted, but may pass freely to their respective places of destination.

29 restriction (16) (30)

Sect. 2. *Provided nevertheless*, That no person or persons be landed or put on shore or suffered to be landed or put on shore nor any goods, wares or merchandise be landed or unladen or suffered or permitted so to be from on board any ship or vessel nearer the

30 Proviso

borough of Wilmington than the distance of one mile; nor shall any such ship or vessel come to anchor within one mile of the said borough, except in case of stress of weather or other unavoidable accident.

31 Violating  
regulations  
(19)

(20—28)

Sect. 3. If any master or commander, owner or consignee of any such ship or vessel, as is in the preceding section mentioned, or any person or persons on board the same shall contravene or violate any of the regulations of this Act, he, she or they so offending shall be subject to the same fines and penalties as are established and provided in the Act, entitled "*A supplement to the Act entitled An Act to prevent infectious diseases being brought into this State and for other purposes*;" which said fines and penalties shall be recovered in the same manner, and appropriated in the same way, as is directed by the said Act.

32 Travellers  
on foot viola-  
ting regula-  
tions

(20—28)

Sect. 4. If any person or persons travelling on foot from any infectious place, during the existence of any proclamation by the burgesses of the borough of Wilmington or by any persons duly authorized by law to make such proclamation for any town or district within this State forbidding the entrance therein of such person or persons as aforesaid, shall come within the limits of the said borough, town or place contrary to such proclamation as aforesaid and the regulations established by virtue of the same, he, she or they so offending shall forfeit the sum of forty dollars to be recovered in the same manner and appropriated in the same way, as is directed by the Act entitled "*A supplement to the Act, entitled An Act to prevent infectious diseases being brought into this State and for other purposes*."

*Passed at Dover, January 21, 1800.*

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## HORSES.

1827. AN ACT *prohibiting the owners of stone horses from suffering the same to go at large.*

Liability of  
owner of  
stone horses  
running at  
large

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 inclosed 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 inclosed 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.

*Passed at Dover, January 30, 1827.*

# IDIOTS AND LUNATICS.

305

AN ACT to vest in the Court of Chancery the care of idiots and lunatics. 1793

Section 1. The Court of Chancery shall have the care of all idiots and lunatics above the age of twenty-one years, so far as to appoint a trustee or trustees to take charge of the persons and management of the estates, both real and personal, of all such idiots and lunatics. 1 Power of Chancery to appoint Trustee

Sect. 2. *Provided*, That before such trustee or trustees be in any case appointed, the Chancellor shall issue a writ or commission for summoning a jury to inquire and determine, whether the person, for whom such trustee or trustees are to be appointed, be an idiot or lunatic. 2 Inquisition

Sect. 3. Such trustee or trustees shall enter into a recognizance with such sureties and in such sum of money and in such manner, as the Chancellor shall require, for his or their faithful discharge of such trust; and such trustee or trustees shall at least once in every two years and as often as the Chancellor shall direct at other times render an account of all the profits of the estates of such idiots or lunatics; in which account the said trustee or trustees shall be allowed for all his, her or their necessary expenses and such sum for his, her or their trouble, as the Chancellor shall think right and proper. 3 Security  
4 Account

Sect. 4. Such trustee or trustees shall and may in the name of such idiot or lunatic do all and every act and thing, which may be necessary for the increase, preservation and protection of his or her estate: And in case of the recovery or death of such idiot or lunatic, his or her trustees shall deliver and pay over to him or her or to his or her heirs or proper representatives all his or her lands, tenements and hereditaments, goods and chattels and other personal estate, deducting thereout such allowances, as shall be made by the Chancellor on the settlement of his or her accounts. 5 Power and duty of Trustee

*Passed February 2, 1793.*

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# IMPORTED EMIGRANTS.

AN ACT concerning the disposal of imported persons. 1829

Section 1. 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 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 Binding as servant or apprentice  
2 deed to be recorded  
(Apprentices & Servants 15)

[2 P]

3 Rights and liabilities of master and 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.

4 not to contravene other laws

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.

*Passed at Dover, February 12, 1829.*

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## INSOLVENCY.

### I.

1827

#### AN ACT concerning insolvent prisoners.

1 Petition of insolvent, imprisoned in civil case

(14)

Section 1. 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 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 distinct-

2 Day for hearing appointed

3 summons for creditors

4 service (38)

ly 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, 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 indorsed 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 :)

*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,*

5 jury trial

6 interrogatories

7 petitioner remanded

8 consent to be adjudged to serve creditors

9 order on petitioner to produce money, bonds, &c.

10 Oath



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 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 mis-stated 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 indorsed upon or annexed to the petition and shall be according to the following form:

11 Assignm't *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 } ———— { L. S. }  
in open court, before

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

11 In Chancery Any person who shall be imprisoned in the common gaol of any county for the non-performance of any decree 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 aforesaid 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.

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.

Sect. 2. 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;) 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 survivors or survivor of them or the executors or administrators of such trustee or such survivor, 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, survivors, survivor, 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,

15 record

16 Assignm't

effect

17 exempt  
property

18 one year's  
rent

19 duties of  
trustees

proceeding or execution shall be for the use or benefit of such trustee, trustees, survivors, survivor, 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.

20 copy--evidence

21 Demands exhibited within year

Sect. 3. The creditors of the petitioner shall respectively exhibit their respective demands against the petitioner to the trustee or trustees or the survivors or survivor of them, or the executors or administrators of such trustee or survivor 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.

22 distribut'n

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

28 overplus

be admitted and entitled to payment or dividend. Any overplus of the estate 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 proportion to the amount of their respective demands.

24 Disputed claims

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

25 Account—change of Trustees, &c.

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.

26 Effect of discharge (37--37)

Sect. 4. 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 imprisonment 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 the following restriction in case of persons adjudged to serve their creditors.

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 of 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 rights of such creditor to demand service pursuant to the adjudication. 27 Adjudication

The rights of creditors to the services of a person adjudged as aforesaid shall stand in priority as follows, that 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. 28 priority of rights to service

Sect. 5. Any thing done pursuant to this Act shall not impair the lien of any mortgage, judgment, recognizance, bond or execution nor any other lien: 29 Liens not affected

Also, any person who as surety, joint debtor or otherwise shall be liable for a debt or demand due from or existing against any 30 Sureties. &c not released

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.

31 Indemnity  
to county  
against ex-  
pense from  
imprisonment  
of a person in  
civil case

Sect. 6. 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 recognizers 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 recognizance directed; which recognizance 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 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,

32 in 10 days  
after notice of  
order

(33)

33 Notice—  
when presu-  
med, and how  
in other cases  
given

(38)

of some neighbor, 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 recognizance shall be entered into pursuant to such order as aforesaid, the principal or principals in such recognizance may at any time direct an entry to be made upon said recognizance 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 gaoler of the county the substance of such order, and of said recognizance 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 recognizance had not been entered into ; but such entry shall in no manner impair the said recognizance ; 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.

Sect. 7. The appearance of any person, who shall be discharged from imprisonment according to this Act, may be entered in any suit or actions 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.

Sect. 8. 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 re-

34 Discontin-  
uance of  
charge under  
recognizance

35 effect of  
such dis-  
charge  
(36)

36 Proceed-  
ing against  
person dis-  
charged

37 Restrict'n  
of discharge

38 appear-  
ance--notice  
on app. of one

of several  
joint plaintiffs  
&c.

spect 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.

39 This Act  
evidence un-  
der general  
issue

Sect. 9. 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.

40 False  
swearing

Sect. 10. 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 perjury, 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.

(crimes—57)

*Passed at Dover, February 8, 1827.*

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## INTEREST.

Before June  
22, 1826

AN ACT for reducing the interest of money from eight to six per cent. per annum.

1 six per cent.

Section 1. No person shall directly or indirectly for any bonds or contracts to be made after the publication of this Act, take for the loan or use of money or any other commodities above the value of six pounds for the forbearance of one hundred pounds or the value thereof for one year, and so proportionably for a greater or lesser sum; any law, custom or usage to the contrary notwithstanding.

2 Forfeiture  
for taking  
higher rate

Sect. 2. If any person or persons whatsoever do or shall (after the publication of this Act) receive or take more than six pounds per cent. per annum on any such bond or contract as aforesaid; upon conviction thereof, the person or persons so offending shall forfeit the money and other things lent, the one half thereof to the Governor for the support of government, and the other half to the person, who shall sue for the same by action of debt, bill, plaint or information in any court of record within this government, wherein no essoign, protection or wager of law nor any more than one imparlance, shall be allowed.

—o—

## INTESTACY.

1827

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.

1 Infant un-  
born—

Section 1. 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.

1 Blar. Com.  
130  
2 Blac. Com.  
169  
5 T. R. 63

Sect. 2. 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 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.

2 Intestacy as to child born after will

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.

3 as to widow—married after will

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.

4 revocation of will by leaving a child

*Passed at Dover, February 7, 1827.*

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## INTESTATES REAL ESTATE.

### AN ACT concerning the real estates of intestates.

1827

Section. 1. 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 before the decease 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 (a) and the lawful issue of any such brothers and sisters, who shall have died before the decease of the in-

1 Descent

a (1)



testate 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 before the decease 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 before the decease of the intestate, or such of them as there may be :

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 ;

2 Curtesy  
Co. Lit. sect.  
35

3 Dower

4 Brothers,  
&c of differ-  
ent blood—  
rule in special  
cases

5 Representa-  
tion  
2 Blac. Com.  
217, ch. 17,  
rule 14

6 "Kin"  
"kindred"

7 Computat'n

8 Partition

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 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 before the decease 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 before the decease 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.

Sect. 2. Lands, tenements or hereditaments, which shall de-

scend 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 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, 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 settle-

9 manner

10 Advancem<sup>t</sup>

ment 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.

Proc. in Chan.  
182  
Ward vs Lent

11 Proceed-  
ings for parti-  
tion  
[41]

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 skillful and impartial surveyor by them to be nominated, make partition thereof, (or) assign to the widow her part thereof 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

petition

12 order

13 appraise-  
ment

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, 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 recognizance to be taken and acknowledged in said court to the State in a penal sum to be determined by said

14 except  
dower

15 and case  
when all parties are  
minors

16 return

17 acceptance  
at appraisement

[33]

[40]

18 Recognizance

(34)

(Limitation  
of personal  
actions—3)  
[Satisfaction  
of Judgments  
& recognizances—1]

19 Right of  
acceptance

20 acceptance  
when apprai-  
sed in parts  
(32)

21 Recogni-  
zance  
(34—10)

22 rights of  
acceptance

(19)

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, brothers 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 older 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 Orphans 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 recognizance 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 return 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 2nd 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 recognizance 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.

23 share, belonging to several, appraised

24 acceptance (32)

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.

(12—13)

26 Party applying to accept—when there are prior rights

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

proceeding

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 be admitted to the acceptance or choice of said premises : but any party under the age of twenty-one years or any party incapable 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.

prior party incompetent

27 Right of acceptance assignable

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.

28 Husband's right

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.

29 order for sale (31--41)

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 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.

30 how prepared

31 discretion of Court to order partition instead of sale

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

32 Acceptance of partition effect on acceptors' right in other parts



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 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.

33 Title under acceptance

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 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.

34 Lien of recognizance

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

35 Lands in several counties

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.

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.

36 Majority of freeholders

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.

37 Oaths

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 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.

38 Minors' guardians

39 No proceeding—except land be in possession

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 Orphans 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

40 Costs

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 hereinbefore prescribed. The said court shall have power to compel obedience to any order for the payment of costs by attachment for contempt, and imprisonment. Upon the petition of the widow or any person entitled to her part, an order may be made merely for assigning her part, without extending to the residue.

41 Second  
section ex-  
tended to pri-  
or cases

Sect. 3. 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 authorized by said section.

42 Liens and  
liability for  
debts

Sect. 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.

43 Appeal,

Sect. 5. 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.

*Passed at Dover, February 5, 1827.*

—o—

## JOINT ACTIONS.

1829 AN ACT concerning the survivorship of actions among joint parties.

Survivency of  
joint actions  
(Constitution  
76)  
(Executors &  
Admin's 60)

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.*

I.

AN ACT to authorize the Governor to appoint an additional number of Justices of the Peace in the several counties of this State. 1815

The number of Justices of the Peace shall be increased so that there shall be not more in commission at the same time in the county of New-Castle than seventeen, † and in the county of Kent, eighteen, and in the county of Sussex, nineteen. ‡

(Constitution 85)  
1 Number of Justices  
‡ (2-3)  
† (4)

*Passed at Dover, February 10, 1815, two-thirds of the members of each House consenting.*

II.

AN ACT allowing for a limited time additional Justices of the Peace to the county of New-Castle. 1825

Section 1. The county of New-Castle shall be entitled to two Justices of the Peace in addition to the number now allowed by law; one of whom shall be appointed and continue to reside in the hundred of Red-Lion and within at least one mile of the village of St. Georges, and one other within at least one mile of the Buck tavern and as near as conveniently may be to the line of the Chesapeake and Delaware canal. *Provided however* that this Act and the appointments of Justices of the Peace made under and in pursuance of its provisions shall continue and remain in force for seven years from the time of issuing the commissions, and no longer.

2 Addition to Justices in N. Castle county for a limited time

*Passed at Dover, February 4, 1825, two-thirds of the members of each House consenting.*

III.

AN ACT allowing an additional Justice of the Peace to the county of New-Castle. 1827

The county of New-Castle 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.

3 Addition to Justices in N. C. county

*Passed at Dover, January 31, 1827, two-thirds of the members of each House consenting.*

IV.

AN ACT allowing for a limited time an additional Justice of the Peace to the county of Sussex. 1827

The county of Sussex shall be entitled to one Justice of the Peace, in addition to the number now allowed by law, and he shall be appointed, and continue to reside, in the hundred of Northwestfork, ty

4 Addition to Justices in Sussex county

## JUSTICES OF THE PEACE.

and in the village of Seaford; *Provided 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:

*Passed at Dover, February 2, 1827, two-thirds of the members of each House consenting.*

## V.

1700

## AN ACT about binding to the peace.

5 binding to  
the peace

Whosoever shall threaten the person of another, to wound, kill or destroy him or do him any harm in person or estate, and the person so threatened shall appear before a Justice of the Peace and attest, that he believes that by such threatening he is in danger to be hurt in body or estate; such person so threatening as aforesaid shall be bound over with one sufficient surety to appear at the next Sessions or county court to be holden for the county, where such offence was committed, to be proceeded against according to law; and in the mean time to be of his good behaviour and keep peace.

## VI.

13 Geo II. AN ACT against drunkenness, blasphemy, and to prevent the grievous sins of profane cursing, swearing and blasphemy.

Preamble

Whereas many persons of vicious lives and morals make a common practice of getting drunk and profane cursing and swearing and blasphemy, to the great dishonor of Almighty God, the scandal of our christian profession and civil society, and the evil example of others; for the discouragement and just punishment whereof,

6 penalty on  
drunkenness

Section 2. All and every person and persons being drunk and being thereof convicted by view of one Justice of the Peace, the testimony of one lawful witness or confession of the party before any one Justice of the Peace within this government, shall forfeit or pay the sum of five shillings for every such offence, to be levied by a warrant under the hand and seal of such Justice, before whom the party shall be convicted, upon the goods and chattels of the offender, to be applied to the relief of the poor of the town or hundred, where the offence is committed; and if no such goods can be found, the party offending shall be set in the stocks there to remain for the space of two hours.

7 abusive be-  
haviour of de-  
fendant, on  
arrest

Sect. 3. And in case any offender or offenders against this Act or any other person or persons taken or arrested by the warrant, order or command of any Court or Justice of the Peace within this government shall use any abusive, reviling or threatening speeches against such court or Justice or resist or assault the person or persons executing such warrant or order, and be thereof convicted, shall be deemed a breaker of the peace, and shall be fined in any sum not exceeding five pounds to be paid to the Governor for the support of government. And in case the party aggrieved, resist-

ed or assaulted shall sue such offender for such resistance or assault, he shall recover treble damages; and the party offending shall be bound to his or her good behavior.

Sect. 4. If any person within this government shall in the hearing of any one Justice of the Peace in his or her common conversation, profanely swear, by the name of God, Christ Jesus, or the Holy Spirit, or curse himself or any other person, and be duly convicted thereof by one or more credible witnesses before any one Justice of the Peace of the town or county, where such offence is committed, the person so offending shall, for every such offence forfeit and pay the sum of five shillings to be levied on his or her goods and chattels, by warrant under the hand and seal of the Justice, before whom the offence is committed or conviction made, for the use of the poor of the town or hundred where the offence is committed, or the party offending shall be set in the stocks there to remain any time not exceeding three hours.

8 penalty on profane cursing & swearing

VII.

AN ACT to prevent the discharging of fire-arms within the towns and villages, and other public places within this State, and for other purposes.

1812

Section 1. If any person or persons shall presume to fire or discharge any gun, ordnance, musket, fowling piece, fusee or pistol within any of the towns or villages of this State or within the limits thereof, or where the limits cannot be ascertained, within one quarter of a mile of the centre of such town or village shall fire or discharge any gun, ordnance, musket, fowling piece, fusee or pistol within or on any of the greens, streets, alleys or lanes of any of the towns and villages within this State, whereon any buildings are or shall be erected, or within one hundred yards of any mill-dam, over or across where any of the main public or State roads may go or pass; every person or persons so offending shall be fined or punished as hereinafter directed.

9 Firing guns &c. within towns, &c. prohibited

Sect. 2. If any free white person or persons or the child or children of any such person or persons shall fire or discharge any gun, ordnance, musket, fowling-piece, fusee or pistol within any or at any of the places or limits aforesaid, every such person or persons or the child or children of every such person or persons shall forfeit and pay for every such offence any sum not exceeding five dollars to be recovered from the person or persons or from the parent of such child or children before any Justice of the Peace of this State on his own view or on the oath or affirmation of any one or more credible witnesses to be recovered as debts under forty shillings are recoverable by the laws of this State.

10 penalty on white persons

11 how recoverable

Sect. 3. If any free negro or mulatto or the child or children of any such free negro or mulatto or any manumitted negro or mulatto or any servant or servants, slave or slaves, apprentice or apprentices of any person or persons whatsoever shall fire or discharge any gun, ordnance, musket, fusee, fowling-piece or pistol within the limits herein before described and be thereof convicted by the view of any one Justice of the Peace or on the oath or af-

12 penalty on free negroes or free mulattoes, &c.

13 Proviso

affirmation of one or more credible witnesses, every person so offending shall forfeit and pay any sum not exceeding five dollars: *Provided nevertheless*, That in all and every case, where the money is not immediately paid on such conviction into the hands of the Justice, before whom such conviction is had, it shall and may be lawful and the said Justice is hereby directed and commanded to commit such person or persons to the gaol of his county there to remain, until the forfeitures and costs are paid.

14 Fines—  
how applied

Sect. 4. All fines and forfeitures incurred under this law shall be paid over for the use of the poor of the county, where the offence shall have been committed.

15 not to ex-  
tend to days  
of public re-  
joicing, &c.

Sect. 5. Nothing in this Act shall extend or be construed to prevent any such firing on any day or days of public rejoicing, or where it is authorized by any law of this State, or where it shall be deemed by the Justice, before whom the information is lodged, that the necessity of the case required the same.

*Passed at Dover, February 4, 1812.*

## VIII.

1815 AN ACT to prevent nuisances from being committed upon the public roads, or upon any street, lane or alley in any borough, town or village within this State.

16 Penalty  
for leaving  
dead animals  
upon public  
places

Section 1. If any person or persons shall place or permit or suffer any person in his, her or their employ to place, or having so placed, shall for the space of six hours thereafter leave, any dead or dying horse, hog, sheep, mule, cow or other cattle or animal whatsoever, which may amount to a nuisance, upon or within one hundred yards of any public highway or turnpike road established by law within this State or upon any street, lane or alley in any borough, town or village within this State; the person or persons so offending and for every such offence upon proof thereof being made before any Justice of the Peace within the county, within which the said offence may have been committed, on the oath or affirmation of one or more reputable witnesses, shall forfeit and pay any sum not exceeding five dollars to be recovered with costs of suit in the same manner, as debts under forty shillings are by the laws of this State recoverable, the one half to be paid over to the trustees of the poor of the county, in which such nuisance shall have been committed, to be by them applied for the use of the poor of such county, and the other moiety to the person, who shall prosecute for and recover the same.

*Passed at Dover, January 26, 1815.*

## IX.

1825

AN ACT providing for the recovery of small debts.

17 Jurisdiction  
denied  
(160)

Section 1. The Justices of the Peace of this State shall severally within their respective counties have jurisdiction of all causes of

action arising from obligation, or express or implied promise or contract for the payment of money, render of rent or delivery of produce, chattels, goods, wares or merchandise, wherein the matter in demand shall not exceed fifty dollars; but a penalty exceeding fifty dollars in any obligation or contract shall not exclude it from this jurisdiction, if the sum actually due upon such obligation or contract shall not exceed that sum, and in such case judgment shall be given for the sum due without respect to the penalty.

Sect. 2. A Justice of the Peace upon a complaint made to him touching a cause of action within his jurisdiction as aforesaid shall issue a summons or *capias* under his hand and seal, bearing date on the day of issuing the same, directed to any constable of his county, mentioning the sum demanded, and expressing in a summons the day of the week and month and place for the defendant's appearance, and in a *capias* the place of return: and the day for the defendant's appearance expressed in a summons shall not be less than five days nor more than fifteen days after the day of the date thereof.

A summons shall be according to the following form, viz.

county ss. *The State of Delaware, to any constable of the said county greeting: We command you to summon [the defendant's name] to appear, on [the day of the week] the [the day of the month] day of [the month], at [the place], before [the name of the Justice], one of our Justices of the Peace for the county aforesaid to answer to [the plaintiff's name] touching a cause of action, wherein [the amount of demand] is demanded:*

*And have you then there this warrant. Witness the hand and seal of the said Justice the day of*  
*A. D. 18*

And the form of a *capias* shall be as follows,

county ss. *The State of Delaware to any constable of the said county greeting: We command you to bring forthwith, before, one of our Justices of the Peace for the county aforesaid, at to answer to touching a cause of action, wherein is demanded: And have there this warrant. Witness the hand and seal of the said Justice the day of*  
*A. D. 18*

Against an executor or administrator a summons shall be issued: if the defendant be a freeholder of the county a summons shall be issued, unless the plaintiff, or one of the plaintiffs or some credible person for him or her shall make solemn oath or affirmation, that the plaintiff (or plaintiffs) has (or have) a just cause of action against the defendant [or defendants], and that the defendants [or one of them] is about to remove from the county, as is verily believed: which oath or affirmation the Justice may administer; and the same shall be reduced to writing and signed by the deponent or affirmant and certified by the Justice and filed; and thereupon a *capias* shall be issued: and if the defendant be not a freeholder of the county, either a summons or a *capias* may be issued.

Sect. 3. A summons shall be served by producing the warrant to the defendant and stating the substance thereof, or by leaving a copy at the defendant's place of abode in the presence of one or



- more of the family or neighbors, at least four days before the day therein appointed for the defendant's appearance before the Justice; but service by leaving a copy shall not be made and shall not be of any effect, unless the defendant shall at the time of such service be an inhabitant of and have a known place of abode in the county, wherein the proceeding shall be. The constable, who shall serve a warrant of summons or of *capias*, shall duly return the same, indorsing thereon under his hand a note of the service and the day of the same; and in case of a summons this note shall specify the manner of the service, to wit: whether it was upon the defendant personally or by leaving a copy at his house; and if there be more than one defendant, the note shall specify the manner of the service upon each of them: but if a defendant shall not appear upon a warrant of summons, judgment by default shall not be given against him or her, until the constable, who served the warrant, shall verify his return by oath or affirmation to be certified and annexed by the Justice to the warrant and signed by the constable; which oath or affirmation may be according to the following form, viz.
- [the name of the county] *county ss.* [the name of the constable].  
*one of the constables of said county. maketh solemn oath (or affirmation) and saith, that he did duly serve the annexed warrant, as the law directs, at the time and in the manner specified in the note of service thereon indorsed.*
- [The signature of the constable] *cons.*  
*Sworn or affirmed the* day of 18 *before*  
 [The signature of the Justice] *Jus. P.*
- Sect. 4. In every case of summons duly served the day appointed in such summons for the defendant's appearance and in every case of *capias* the day, on which the defendant shall be brought before the Justice, shall respectively be days for hearing the parties in said respective cases; but the Justice may adjourn the proceeding in either case to some other day, and so from day to day, as shall be necessary in order to afford to the parties opportunity for a fair trial; but the first adjournment shall not be for a period of more than fifteen days and no subsequent adjournment shall be for more than thirty days, to be determined by the Justice according to the circumstances of the case, and so as to bring the cause to as speedy a trial as the circumstances will admit; the first adjournment, if the sum demanded exceed five dollars and thirty-three cents, shall be granted on the application of either party; but no subsequent adjournment shall be granted, unless it shall appear to the satisfaction of the Justice by the oath or affirmation of the party applying for the adjournment or otherwise, that such party is not prepared to go into the trial with safety, and that such want of preparation is not owing to design or to not using due diligence; and upon granting a second or subsequent adjournment the Justice may make an order, that the party applying for an adjournment shall pay the costs of the summoning and attendance of the freeholders and witnesses on the day of granting such adjournment or any part of such costs, as the said Justice may under all the circumstances deem just and reasonable; and an execution may be issued for levying such costs. And in every case of *capias*,

wherein the sum demanded shall exceed five dollars and thirty-three cents, the Justice may refuse an application of the defendant for an adjournment, unless the defendant shall give sufficient special bail (to be approved by the Justice) to the action: an entry of such bail shall be made upon the docket of the action and shall be signed by the bail, or it shall be void: the entry may be made according to the following form, viz.

[The name of the special bail] on the day of 18 becomes special bail for the defendant (or defendants) in this action. Bail shall be discharged—if the defendant shall surrender himself or be surrendered by his bail to the Justice on the day of giving judgment in the action, wherein the bail was entered, or on any subsequent day, on which there shall be a constable in attendance before the Justice, or to a constable having an execution authorizing the taking of the body issued upon such judgment—or if there shall be a stay of execution upon such judgment, or if the defendant shall die before the return of an execution authorizing the taking of the body on such judgment: but if there be no such discharge and it shall appear by the return upon an execution that goods sufficient to satisfy the judgment cannot be found, and that the defendant cannot be found to be taken in execution, proceedings may be had against the bail by scire facias, which must be delivered to a constable at least five days and served at least four days before the return thereof; but if the defendant in such scire facias cannot be found and have no known place of abode in the county, so that such service cannot be made, the constable shall return the fact; and thereupon an alias scire facias may issue, dated on the day of the return of the first and returnable on some day at least fifteen days after the date thereof, which may be served on the return day or any day previous thereto; and if service thereof cannot be made, the fact may be again returned, as upon the first scire facias; and in case service of a scire facias shall be returned or in case there shall be two returns, to wit, upon an original scire facias and upon an alias scire facias, that service cannot be made as aforesaid, the Justice may proceed and if the defendant in the scire facias shall not appear, give judgment against him by default; but before judgment by default shall be given, the constable shall verify the return by oath or affirmation certified and annexed to the scire facias by the Justice and signed by the constable and made in case of service according to the form herein before prescribed in relation to the service of a summons; † but if there cannot be a service, then the said oath or affirmation shall state in substance, that the constable has made diligent search for the defendant in the scire facias and cannot find him nor hear, that he has any place of abode in the county; and this shall be annexed to the alias scire facias; but if the defendant in the scire facias appear, the same proceedings shall be had, as in other cases before the Justice under this Act; but a judgment against bail may be for the full amount of the original judgment inclusive of interest and costs, although such amount shall exceed fifty dollars; and the bail shall also have privilege on the return day of any scire facias to discharge himself by surrendering his principal and paying the costs of the proceedings against the bail. Upon any sur-

32 Special Bail

33 entry of bail must be signed by bail

34 bail how discharged

35 proceeding against bail

(121)

† (25)

36 surrender by bail

render of a defendant to a Justice in discharge of his bail, other bail may be taken and entered according to the same form ; but if a defendant surrendered cannot give bail to the satisfaction of the Justice, the Justice shall commit such defendant by a mittimus according to the following form :

(The name of the county) *county ss.*

(The name of the plaintiff) *plaintiff*

*vs.*

(The name of the defendant) *defendant*

} Judgment  
debt \$—  
costs \$—

[The name of the defendant surrendered] *the defendant* [or one of the defendants] *having been surrendered in discharge of his bail is committed to the common gaol of said county, from whence he is to be discharged at the end of four days from the date hereof, unless he shall during that time be charged in execution ; and [the constable's name] is ordered to deliver said defendant to the keeper of said gaol.*  
Dated the                      day of                      18

[The signature of the Justice] *Jus. P.*

37 bail may  
arrest principal

and special bail shall have full power to surrender his principal and for that purpose to arrest him, wherever he can find him, and detain him in custody a reasonable time.

38 Judgment  
by default

Sect. 5. In case of a summons duly served, if the defendant shall fail to appear according to the appointment therein expressed, or in case of the adjournment of a cause, whether the first process be summons or *capias*, if the defendant shall fail to appear pursuant to such adjournment, the Justice may adjourn the cause to a further day or he may hear the allegations and proofs of the plaintiff in the absence of the defendant and give judgment against such defendant by default ; the return of the summons, if there have been no appearance, being first verified† as by this Act required :

† (25)  
39 such judgment taken off

but a defendant may within fifteen days after the day of giving such judgment apply to the Justice to take off the same and let the parties into a trial ; and the Justice shall hear such application, first giving to the plaintiff or his agent if in the county notice of the time of such hearing, and if upon hearing the Justice shall be satisfied, that there ought to be a trial, and that the defendant was not guilty of wilful negligence in letting judgment go against him by default, the application shall be granted and a day appointed for trial, whereof the plaintiff or his agent shall have notice. If a plaintiff fail to appear, there shall be an adjournment or a nonsuit, which may be taken off in like manner, as a judgment by default.

40 non-suit

41 Trial by  
freeholders  
(44)

Sect. 6. In every case, wherein the sum demanded by the plaintiff or insisted upon by the defendant shall exceed five dollars and thirty-three cents, coming before a Justice of the Peace under this Act either party may claim a trial by freeholders ; and thereupon the Justice shall appoint three judicious freeholders of the county, standing impartial and indifferent between the parties to try the cause and shall administer to them an oath or affirmation according to the following form, viz.—*You do solemnly swear [or affirm] that you will faithfully and impartially try the cause pending between plaintiff and defendant and*

42 their oath

*make a true and just report thereupon according to your evidence ; and the freeholders shall hear the allegations of the parties and*

their proofs; and if either party shall refuse or wilfully neglect to appear before the freeholders, they may proceed in his absence; and the said freeholders or any two of them agreeing shall make a report under their hands and return the same to the Justice, who shall give judgment according to such report; and if any freeholder appointed, shall refuse or neglect to serve or shall fail to try the cause or to act till a determination<sup>43</sup> shall be made by the freeholders, the Justice may supply the place of such freeholder by appointing some other judicious and impartial freeholder, who shall take oath or affirmation as aforesaid and proceed in like manner and with like powers, as if he had been originally appointed. But there shall be no trial by freeholders, if the defendant shall not have appeared nor unless the sum demanded or insisted upon shall exceed five dollars and thirty-three cents, nor unless such trial shall be claimed by one of the parties: and when there shall be no trial by freeholders, the Justice shall hear the case and give judgment according to the right of the matter and the law of the land.

43 report  
judgment

† (17)

44 cases, in  
which trial by  
freeholders  
cannot be

45 hearing by  
Justice

Sect. 7. A Justice of the Peace may require the attendance of freeholders, whom he shall appoint as aforesaid, and may issue a summons under his hand and seal directed to any constable of his county for summoning the freeholders appointed to try a cause or either of them to appear before him, as he in such summons may direct; and any freeholder duly summoned, who shall refuse or neglect to appear pursuant to such summons, or to take oath or affirmation as required, and also any freeholder duly sworn or affirmed, who shall refuse or neglect to proceed to try the cause and act till the determination by the freeholders or to make report and return the same to the Justice, unless he shall dissent from the other freeholders, shall, if he shall not show to the Justice a sufficient excuse, be adjudged by the Justice to be guilty of a contempt and ordered to pay to the State the sum of five dollars with costs, which sum and costs shall be levied by distress and sale of the goods and chattels of such freeholder by virtue of a warrant under the hand and seal of the Justice directed to any constable of his county.

46 summons  
for freehold-  
ers  
(171)

47 default

48 penalty

Sect. 8. In every action before a Justice of the Peace under this Act it shall be incumbent upon the defendant or defendants, if he, she or they shall have against the plaintiff or plaintiffs any account, demand or cause of action cognizable before the Justice according to the first section of this act, to bring forward and insist upon such account, demand or cause of action, and the Justice shall enter on his docket the nature of the demand and the sum demanded; and any defendant or defendants neglecting to do so shall, if such action against him, her or them shall be prosecuted to judgment, lose such account, demand or cause of action and be forever barred from suing for, or recovering, the same. And if the defendant or defendants shall have against the plaintiff or plaintiffs in any action before a Justice of the Peace under this Act any cause of action, arising from obligation or express or implied promise or contract for the payment of money, render of rent or delivery of produce, chattels, goods, wares or merchandise, although the matter in demand shall exceed fifty dollars, such defendant or defendants may, in such action bring forward and insist upon such cause

49 Set-off  
(51)

50 neglect  
forfeits  
[52]

51 demand of  
defendant  
above \$50

52 not forfeit-  
ed tho not  
set off

53 Judgment  
for defendant

54 but if sum  
found for him  
above \$50

55 Costs

56 Executors  
& Adm'rs  
57 Judgments  
of assets

58 questions  
of assets not  
triable by  
freeholders  
59 no judgm't  
against by de-  
fault till good  
cause of ac-  
tion shewn

60 New trial

61 for def't  
[33]

for plaintiff

of action; but if they shall not think proper to do so, they shall not lose such cause of action nor the benefit of any suit for recovering the same: and if it shall be found by the report of freeholders, or if it shall appear to the Justice upon a trial before him, that there is a sum due from the plaintiff or plaintiffs to the defendant or defendants in an action, judgment shall be given in favour of such defendant or defendants for such sum, provided the same shall not exceed fifty dollars; and if the same shall exceed fifty dollars the fact shall be stated on the record and judgment shall be given for costs for the defendant or defendants, who shall be at liberty to prosecute their cause of action in any court having jurisdiction thereof, or such defendant or defendants may remit the excess above fifty dollars and take judgment for that sum.

Sect. 9. The plaintiff or plaintiffs, defendant or defendants recovering judgment shall in all cases recover his, her or their costs of suit, which shall be allowed and included in such judgment; excepting only, that if on a trial by freeholders, there shall be a report for the plaintiff or plaintiffs in the action for a sum not exceeding five dollars and thirty three cents, no costs shall be allowed to such plaintiff or plaintiffs for summoning or the attendance of freeholders, or for summoning or the attendance of witnesses, unless the defendant shall have brought forward and insisted upon a demand exceeding that sum, and if the plaintiff or plaintiffs shall be non suit or discontinue or withdraw the action, judgment shall be given for the defendant or defendants for costs.

Sect. 10. Every judgment before a Justice against an executor or administrator as such shall be of assets, and shall not charge the executor or administrator absolutely, but only in case such executor or administrator at the time of giving the judgment or before or afterward have assets, which according to law ought to be applied to the cause of action; and all cases, in which the question of assets shall be determined, shall be tried by the Justice and not by freeholders; and no judgment shall be given against an executor or administrator as such by default, until the plaintiff shall produce the obligation, note or contract of the deceased or a book of accounts regularly and fairly kept and verified by oath or affirmation or other sufficient proof and a probate regularly made according to law; but a book of accounts shall not be received for cash entries or items not properly chargeable in account.

Sect. 11. If on a trial before freeholders there shall be a report and judgment in favor of the plaintiff, for any sum exceeding five dollars and thirty-three cents and not exceeding fifteen dollars exclusive of costs, the defendant may at any time within fifteen days from the day of giving such judgment demand a new trial, which shall be granted, and the plaintiff shall have due notice thereof; but the Justice may require the defendant if not a freeholder of the county to give bail to the action before granting a new trial: and if the demand of the plaintiff shall be of a sum exceeding five dollars and thirty-three cents and not exceeding fifteen dollars and there shall be a trial by freeholders and a report for a sum less than five dollars and thirty-three cents exclusive of costs, or against such plaintiff, in either case, the plaintiff may demand a new trial, and it shall be granted to him. And in all cases of new

trials the proceedings shall be the same, as upon the original trial: but if a judgment on the first trial be given against the plaintiff, he may be required to give bail before a new trial granted, if he be not a freeholder of the county; and if a plaintiff upon a new trial 63 costs claimed by him shall recover less than five dollars and thirty-three cents exclusive of costs, the defendant shall be allowed his costs in such new trial.

Sect. 12. To an obligation for the payment of any sum not exceeding fifty dollars there may be subjoined or annexed a warrant 64 Judgment duly executed, either as a part of the obligation or otherwise, authorizing any Justice of the Peace to enter judgment upon such obligation without process; and by virtue of such obligation and warrant, whether executed before or after the passing of this Act, any Justice of the Peace may without any process enter an action at the suit of the obligee or obligees, or his, her or their executors or administrators or *(if the obligation be assignable)* assigns against the obligor or obligors and give judgment against the defendant or defendants for the amount due for principal and interest on such obligation with costs; *provided*, that no such judgment 65 amount shall be given for an amount exceeding fifty dollars exclusive of costs; and, *provided also*, that the obligation and warrant shall in every case be filed with the Justice and be a part of the record of 66 note must be filed with Justice the action, and that if the defendant or either of the defendants or his, her or their executors or administrators shall upon oath or affirmation to be reduced to writing and signed by the deponent or affirmant and filed with the Justice, deny the obligation and warrant or set forth any just defence, a trial shall be granted, which 67 trial shall proceed in all things in the same manner, as if action had been regularly commenced upon the obligation; but if there have been a levy on an execution, the same shall not be set aside nor shall the judgment be vacated, until there shall be a trial and a determination made against the obligation and warrant; but such levy shall be a security for what may be found due to the plaintiff, the proceedings thereupon being stayed, unless the defendant or defendants shall give security to the satisfaction of the Justice to pay 68 judgment & execution to stand until trial to the plaintiff or plaintiffs the sum justly due in the action; which security shall be entered in the action according to the following form; *on the day of A. D. 18* [the name of the surety or sureties] *become surety*, (or if more than one, *sureties*) *for the defendant or defendants for the payment of whatever is justly due to the plaintiff (or plaintiffs) in this action*; and the surety or sureties shall sign the said entry, or it shall be void; and upon such entry being made and signed the judgment 69 unless security and execution shall be set aside. 70 entry of security to be signed by surety

Sect. 13. Upon every judgment given by a Justice of the Peace against a freeholder of the county for a sum exceeding five dollars and thirty-three cents exclusive of costs there shall be a stay of execution for six calendar months, unless such freeholder shall waive his privilege or unless the creditor in the judgment or one of them in case of several or some credible person shall make oath or affirmation *that he (or she) has good ground to apprehend, and does verily believe, that if the stay of execution for six months be allowed, the sum due by the judgment will be lost*; which 71 Stay of execution 72 against freeholder

one defend't  
a freeholder

73 upon se-  
curity  
[77]

74 entry sign'd  
[70]

75 remedies  
thereon

76 one defend't  
not a freehol-  
der

77 execution  
superseded

78 Execution  
[133]

79 date

oath or affirmation shall be administered by the Justice and the same shall be reduced to writing and shall be signed by the deponent or affirmant and certified and filed by the Justice: and upon such oath or affirmation being made execution may forthwith issue: and if either of several persons, against whom a judgment may be given, be a freeholder of the county, the foregoing provision shall extend to the case: and if a freeholder, in relation to whom oath or affirmation shall be made as aforesaid, or if a person not a freeholder of the county, against whom a judgment shall be given for a sum exceeding five dollars and thirty-three cents exclusive of costs, shall within two days after the day of giving such judgment give sufficient security to the acceptance of the Justice to pay the judgment, there shall be a stay of execution upon such judgment for nine calendar months from the day of giving the same; such security shall be entered upon the docket of the judgment according to the following form, viz.—on the day of

18 [the name of the surety or sureties] become surety (or sureties) that this judgment shall be fully satisfied; and the said entry shall be signed by the surety or sureties, or it shall be void: which entry and the entry prescribed in the last preceding section shall be an obligation of record and shall oblige the surety or sureties or his, her or their executors or administrators jointly or severally to pay the judgment, to which such entry refers, given or to be given; and an action of debt may be sustained on such entry at suit of the creditor or creditors in the judgment or his, her or their executors or administrators in any court having cognizance of the sum; or the same may be proceeded on by scire facias before the Justice, either jointly with the original defendant in the judgment or separately; or execution may be issued against the goods and chattels and bodies of the sureties in every case, in which such entry shall either according to this section or the next preceding section be made, for levying or satisfying the debt, interest and costs in the judgment according to the form hereinafter prescribed.

If either of the persons, against whom a judgment as aforesaid against several shall be given, shall not be a freeholder of the county, the foregoing provision in relation to giving security and allowing nine months stay of execution shall extend to it, although other of the debtors in the judgment shall be a freeholder or freeholders of the county. And if in cases, to which the foregoing provision relative to giving security shall be applicable, the security shall not be given immediately on rendering the judgment or on making oath or affirmation as aforesaid, execution may issue, but shall be superseded and the proceedings thereon quashed, if security shall be given within the two days allowed as aforesaid.

Sect. 14. Upon every judgment given by a Justice of the Peace execution may be issued by the Justice, who shall give such judgment, or by any other Justice of the same county, with whom the docket containing such judgment shall be deposited or a duly certified transcript of all the docket entries touching the judgment shall be filed. Every such execution shall bear date of the day of issuing the same and shall be returnable on some certain day of the week and month therein to be specified, not more than six calendar

months nor less than fifteen days from the date thereof: and such execution shall be according to the following form, viz:—

[133]

county ss. *The State of Delaware, to any constable of said county greeting. We command you, that you levy and make of the goods and chattels of* \_\_\_\_\_ *in your bailiwick the sum of*

*, which* \_\_\_\_\_ *on the* \_\_\_\_\_ *day of* 18 \_\_\_\_\_ *by the judgment of* \_\_\_\_\_ *one of our Justices of the Peace for the said county recovered against him, (or her or them) with legal interest from the* \_\_\_\_\_ *and the further sum of*

*for costs of suit, with your fees upon this process; and that for want of such goods and chattels sufficient for said purpose. you levy and make said sums, interest and fees or any unsatisfied balance thereof of the goods and chattels of* \_\_\_\_\_ *surety (or sureties) of record for the payment of the judgment aforesaid in your bailiwick; and that for want of goods and chattels sufficient for the purpose aforesaid to be found within your bailiwick you take and convey the said* \_\_\_\_\_ *to the common gaol of the county aforesaid*


† [82]

‡ [82]

|| 83

*and commit him (or her or them) to the keeper of said gaol to be detained in safe custody, until the aforesaid sums and interest and all legal fees shall be satisfied, or other discharge from such imprisonment shall be directed according to law; and that you return this execution with your doings hereon plainly set forth to*

*one of our Justices of the Peace for the county aforesaid on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *(next or in-*

*stant). Witness the hand and seal of the Justice last*  
 *named the* \_\_\_\_\_ *day of* \_\_\_\_\_

But whenever the sum recovered shall exceed fifteen dollars exclusive of costs, the execution may be directed to the Sheriff of the county instead of a constable. And if there be no surety entered upon the record, the clause in the foregoing form relative to levying on the goods and chattels of a surety or sureties shall be omitted; and said clause shall also be omitted, if the creditor in the judgment or the person having the beneficial interest therein shall so direct; and in no case shall the debtor or debtors in the judgment be allowed to make any objection to the process on account of the omission of said clause: and in all cases against executors or administrators the clause for taking and imprisoning the defendant or debtor shall be omitted.

81 when directed to sheriff  
 82 clause against sureties, omitted

83 clause for imprisonment omitted

Sect. 15. All goods and chattels, taken in virtue of such execution as aforesaid shall be inventoried by the officer and appraised by two freeholders of the county to be appointed and sworn or affirmed by him; and no sale shall be made till ten days after such appraisement nor shall the execution bind the goods and chattels until such appraisement; and public notice shall be given of every sale at least ten days before the day thereof by advertisement posted in at least four of the most public and convenient places to the place of sale, setting forth the goods to be sold and the day, hour and place of sale; also one such advertisement shall be delivered to the person or persons, whose goods are to be sold, at least ten days before the day of sale.

84 Execution binds from inventory and appraisement

85 notice of sale—public

86 & to party

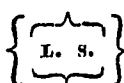
Sect. 16. Every Justice of the Peace shall make a fair entry in a docket by him to be kept of every action commenced before him.

87 Docket of suits



- therein setting down the names of the parties, the cause of action and the sum demanded, the day of issuing the process, the day of the return if it be a summons, and the day when returned if it be a *capias*, the return of the constable, every adjournment and the day to which the same shall be, any demand which the defendant shall bring forward and insist upon and the sum thereof, in case of trial claimed by freeholders the names of the freeholders appointed the sum of the report made and for which party, the amount of the judgment and for which party, the costs regularly taxed, entries of bail or of security as before provided, and the issuing of execution and the day thereof. And further, every Justice shall make a fair entry in another docket of every execution by him issued, setting down the names of the parties, the day of issuing the execution, and the day when the same shall be returnable, the debt therein and the costs, the direction whether to any constable or to the sheriff, the officer or person to whom the same shall be delivered, the day of the same being returned by the officer, a true copy of the return made, and if an inventory and appraisement be returned, the amount thereof; and if any further proceedings shall be after such return, the Justice shall make a fair entry thereof in his execution docket; and there shall be a plain reference upon the docket of the judgment to the page of the execution docket, where the execution shall be entered, and to the number of the execution; and the entry of the execution shall contain a plain reference to the page of the docket of the judgment; and if the proceedings shall be carried to any other page of the execution docket, a reference shall be made thereto; and every Justice shall make and keep two alphabetical indexes, to wit; a direct index and a reversed index to each docket: and whenever it shall appear by the return or the proceedings upon an execution, that a judgment is satisfied, it shall be the duty of the Justice, in whose hands the docket containing the judgment shall be, to make an entry to that effect upon the entry of such judgment, provided such return or proceedings be regularly before him.
- 88 Docket of executions
- 89 reference from one to the other Docket
- 90 indexes
- 91 satisfact'n of judgment
- 92 Return of execution
- (93)
- 93 venditioni exponas
- Sect. 17. The sheriff or constable, to whom an execution issued by a Justice of the Peace shall be duly delivered, shall return the same according to the command thereof with a certificate thereon under his hand of all his proceedings by virtue thereof and of his fees, stating the several items; if no levy shall have been made, the return shall contain the reason why there shall have been no levy; if there shall have been a levy made, an inventory and appraisement of the goods and chattels shall be returned and the inventory shall state, as whose property the goods and chattels were taken in execution; and in case of a sale, the amount thereof shall be returned; and if there shall have been a levy made but no sale, then an execution of venditioni exponas shall be issued upon the request of the creditor or creditors or either of them in the original execution or any party entitled to the judgment, according to the following form; viz.
- county ss. *The State of Delaware, to any constable of said county, greeting: We command you, that after giving due notice you sell at public vendue the goods and chattels specified in the schedule hereunto annexed for the purpose of satisfying a judg-*

ment recovered on the day of 18 before  
 one of our Justices of the Peace for the county aforesaid  
 by against for the sum of  
 on interest from the and the further  
 sum of costs of suit, and the sum of  
 fees on the former execution, and your fees on this process, or so  
 much of said goods and chattels, as shall be sufficient for said  
 purposes, after discharging prior liens, if any; which goods and  
 chattels have been levied upon by virtue of an execution issued on  
 said judgment and dated the day of 18  
 ; and that you return this execution and your doings  
 hereon plainly set forth to one of our  
 Justices of the Peace for the county aforesaid on the  
 day of (next or instant).

 et the day of  
 18

And to the said execution the Justice shall annex a true copy of the inventory and appraisement returned on the preceding execution: if the original execution were directed to the sheriff, the execution of venditioni exponas may be so directed: the issuing of an execution of venditioni exponas shall not discharge the officer, to whom the former execution was delivered, from any liability incurred by neglect or default in respect to his duties under the former execution: and after one execution of venditioni exponas has been issued, no fees shall be taken or charged by the Justice or any officer for issuing any subsequent execution of venditioni exponas or for any proceeding thereupon, in respect to the defendant; but the plaintiff may be charged with, and required to pay, the legal fees for issuing and for all services under such subsequent executions; provided always, that if the sheriff or constable, to whom the first execution of venditioni exponas shall be delivered, shall not use due diligence and all proper means to effect a sale, he shall be charged with the amount of the execution in the same manner, as if he had returned a sale sufficient to satisfy the same.

Sect. 18. If any sheriff or constable, to whom an execution shall be duly delivered, shall refuse or neglect to return the same according to the command thereof or to return his doings thereon plainly set forth or to observe in such his return the directions of this Act or to annex an inventory and appraisement of the goods and chattels levied upon by virtue of an execution to such execution as herein before required in that particular, such sheriff or constable shall for such refusal or neglect be liable for the full amount of the money, which he shall have been commanded by the execution to levy and make, in the same manner and as effectually, as if he had levied and received the same.

Sect. 19. A copy certified by a sheriff or constable of an execution in his hands shall be delivered to the gaoler upon committing to his custody any person or persons by virtue of such execution and shall be as sufficient warrant for the commitment and detainer, as the original execution.

Sect. 20. If a sheriff or constable shall levy or receive any sum of money by virtue of an execution issued by a Justice of the Peace,

94 inventory annexed

95 directed to Sheriff

96 no fees for issuing 2nd vend. exp.

97 liability of officer on vend. exponas

98 liability of Sheriff or constable on execution

99 commitment to prison

100 Default in paying over

money rec'd  
on execution

20 pr. ct. and  
double costs

101 Lien on  
lands

102 if sum  
due be \$15 or  
upwards

103 Assignee

104 Appeal

and shall not pay the same upon demand, to the person or persons entitled to receive the same or his, her or their lawful agent or attorney, such person or persons so entitled or his, her or their executors or administrators may charge against, and shall have right to receive and recover from, such sheriff or constable, besides the full sum so levied or received, the rate of twenty per centum per annum upon said sum to be computed from the time of making the demand and also double costs of suit ; which rate shall be assessed and added to the principal sum in any suit brought to recover such sum.

Sect. 21. If it shall appear by the return upon an execution, that goods and chattels, sufficient to satisfy the same cannot be found to be levied upon by virtue thereof, the creditor or creditors in the judgment, whereon such execution issued, may obtain a transcript duly certified by the Justice of the docket entries of such judgment and of the execution thereupon and may deliver such transcript to the prothonotary of the Court of Common Pleas for the county, wherein such judgment was given ; and the said prothonotary shall file the said transcript and enter the sum for which judgment was rendered, from what time interest commences thereon and the amount of the costs and the name of the person, in whose favor and against whom entered, in his judgment docket among the judgments confessed, setting down truly the day of the filing and entering of such transcript as aforesaid ; and such judgment, a transcript whereof shall be so filed and entered, shall from the date of such entry become and be a lien upon the lands, tenements and hereditaments of the debtor or debtors in such judgment in the county in the same manner and as effectually, as judgments rendered in the said Court of Common Pleas in and for such county ; and the same writs and proceedings shall be awarded and had for executing such judgment, as according to law are or shall be awarded and had for executing the judgments of the said court : but this section shall not extend to any judgment, upon which there shall not be due exclusive of interest and costs fifteen dollars or upwards after the proper application of whatever sum may be levied by virtue of the execution thereon issued ; in which application what shall be due for interest and lawful costs shall be first satisfied ; and if any judgment shall be assigned according to law to joint debtor or debtors or to surety or sureties, the assignee shall have the full benefit of this section.

Sect. 22. Appeals shall be allowed of right from judgments given by Justices of the Peace to the Supreme Court or to the Court of Common Pleas at the election of the appellant in the cases herein after mentioned, that is to say ; from every judgment given by a Justice of the Peace without the report of freeholders for a sum exceeding five dollars and thirty-three cents exclusive of costs ; and from every judgment given by a Justice of the Peace upon the report of freeholders for a sum exceeding fifteen dollars exclusive of costs the party, against whom judgment shall be given, shall have the right of appeal : also if the demand of the plaintiff, or the demand of the defendant brought forward as herein before directed, shall exceed five dollars and thirty-three cents and there shall be without the report of freeholders judgment, in which such

demand or a part thereof exceeding five dollars and thirty-three cents shall be disallowed or defalked, such plaintiff or defendant shall have the right of appeal; also if the demand of the plaintiff, or the demand of the defendant brought forward as aforesaid, shall exceed the sum of fifteen dollars and there shall be upon the report of freeholders judgment, in which such demand or a part thereof exceeding fifteen dollars shall be disallowed or defalked, such plaintiff or defendant shall have the right of appeal: and there shall not be an appeal in any other case than those afore specified.

Sect. 23. An appeal shall be allowed by the Justice at any time within fifteen days from the giving of the judgment and not after, (counting the day of giving the judgment as one of said days,) upon the party entitled to the appeal or his agent or attorney praying it and offering sufficient security to be approved by the Justice in such reasonable sum, as the Justice shall deem fully sufficient to cover the amount of the judgment appealed from with all additional costs on the appeal: and the Justice shall make an entry of the appeal and of the security in his docket, succeeding the entry of the judgment, according to the following form; viz.

On the                      day of                      18                      the said  
   appeals; and                      becomes surety [or if  
more than one surety become sureties] in the sum of                      that  
the said appeal shall be prosecuted with effect and also that any judgment, which shall be rendered against the said  
or his [or her or their] executors or administrators upon said appeal,  
shall be satisfied;

which entry shall be signed by the surety or sureties, or it shall be void: and such entry duly made and signed shall be an obligation of record and shall to the extent of the sum therein expressed bind the surety or sureties and his, her or their executors and administrators jointly and severally to satisfy any judgment, which shall be rendered upon the appeal against the party appealing or his, her or their executors or administrators in the court, in which the appeal shall be entered—and if the appeal shall not be duly entered in the Supreme Court or Court of Common Pleas, as herein after prescribed, or if the same shall be dismissed then to satisfy the judgment appealed from with all additional costs of the appellate upon the appeal: And an action or actions of debt may be sustained upon such entry at suit of the appellate or his, her or their executors or administrators against such surety or sureties or his, her or their executors or administrators before a Justice, if the demand shall not exceed fifty dollars, or if above that sum, then in any court having cognizance of such cause of action; or if the appeal shall not be entered or shall be dismissed, execution may issue against the defendant and surety, as herein after provided. But an appeal shall be allowed to executors or administrators without security.

Sect. 24. It shall be the duty of the party appealing or his, her or their executors or administrators to cause the appeal to be entered in the Supreme Court or the Court of Common Pleas in the county, wherein the judgment appealed from shall have been given, on or before the first day of the term of such court next after the date of the appeal, and for this purpose to deliver a transcript duly

105 Time of  
Appeal

106 Security  
(110)

107 entry

108 signed  
by surety

109 remedy

110 Ex'rs or  
Adm'rs give  
no security

111 entry of,  
& proceedings on, app'l  
(113)  
(170)

certified of all the docket entries in the case, wherein the appeal shall have been taken, to the clerk or prothonotary of the court, in which the appellant shall elect to enter the appeal: and such clerk or prothonotary shall file the transcript so delivered to him, first indorsing thereon the day and time of receiving the same, and shall set down the appeal upon his docket with a statement of the date of the appeal and of the day and time of filing the transcript and shall immediately issue a summons directed to the sheriff of the county, or if he be a party interested, to the coroner for summoning the appellate to appear and answer to the appeal; which summons if issued in vacation shall be returnable on the first day of the next term, if issued in term time shall be returnable forthwith. And the court, in which an appeal shall be entered, shall have jurisdiction and take cognizance thereof; and the appeal shall be proceeded in by declaration, pleadings and trial to judgment and execution in the same manner and form, under the same rules and by the same process, as are had and used in actions originally instituted in such court; but the trial shall be had at the first term, unless the court shall for good cause shown continue the case: And if a judgment appealed from shall be for a defendant in the action for a sum found due to him, such defendant shall stand as plaintiff in the appeal and file the declaration; and in the appeal each party may make demands against the other, and the jury by their verdict may find a sum either for plaintiff or defendant according to the evidence before them in the same manner, as freeholders before the Justice could report; and judgment shall be rendered in favor of the party, for whom a verdict shall be given, for the sum found for him. 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.

112 costs

118 Appeal  
abated114 stricken  
off by Justice

Sect. 25. If the party appealing shall not cause the appeal to be entered in the Supreme Court or Court of Common Pleas, as herein before prescribed, the appeal shall be abated: and the certificate of the clerk, and the certificate of the prothonotary under the hand of the officer and seal of the court duly showing, that the appeal has not been regularly entered in either court, being made after the expiration of the first term of that one of the said courts, which shall at the date of the appeal have been the most remote, and produced to the Justice, he shall file such certificate and strike off the appeal; also if the party appealing, after the appeal shall be duly entered, shall neglect to prosecute the same to a final determination or shall fail to comply with any rule, or make other default, so that in an original action in a like case a non-suit

or judgment of non pros or judgment by default would be entered; in every such case instead of a non-suit or judgment of non pros or judgment by default there shall be entered an order of court, that the appeal be dismissed and the record remitted to the Justice, from whom the appeal came, and a judgment, that the appellate recover costs against the appellant; and upon such record being remitted with the proceedings in the court duly certified, the Justice shall strike off the appeal. And in every case, in which an appeal shall be stricken off pursuant to this section, the Justice shall add the costs of the appeal to the original costs before him, and shall upon application of the creditor in the judgment issue execution upon the judgment, with the costs on the appeal added, as well against the surety or sureties on the appeal, as the original defendant in the same manner and form and subject to the same direction and provision, as herein before prescribed in relation to sureties of record and principals in other cases.

115 dismissed  
by court  
& stricken off  
by Justice

16 proceeding

(80)

Sect. 26. If a surety, who shall be or may become according to the provisions of this Act liable to execution, shall die before an execution can be or shall be issued, so that by reason of such decease an execution cannot regularly issue against such surety, in every such case the creditor in the judgment may proceed by scire facias upon such judgment and suretyship against the executors and administrators of such surety and obtain judgment of execution of such judgment against such executors or administrators and execution thereon in the same manner and as effectually as if the said judgment had been a several judgment against such surety. But in every case a surety or the executors or administrators of a surety paying a judgment shall be entitled to an assignment thereof and to pursue and use all remedies and process thereon, so far as to reimburse to him, her or them such sum, as in justice and equity he, she, or they ought to receive, which the creditor in the judgment could use either against the principal or joint surety or the executors or administrators of such.

117 Death of  
surety

118 scire facias  
against his  
executors

119 Judgm't  
assigned to

Sect. 27. The form of a scire facias shall be as follows, viz :—

120 Forms of  
scire facias  
against ex'rs

1st. against executors or administrators—

county ss. *The State of Delaware to any constable of the said county greeting: We command you, that you make known to administrator [or administrators or executor or executors as the case may be] of deceased to appear before*

(127)

*one of our Justices of the Peace for the county aforesaid at day of next, [or instant] to shew if there be any cause why execution should not be had against the said administrator (or administrators or executor or executors) as aforesaid of a judgment recovered by against the said deceased, before one of our Justices of the Peace for the county aforesaid on the day of 18 for the sum of with costs; and have you then there this warrant.*

(182)

{ L. s. } Witness the hand and seal of the last named Justice day of 18

121 against  
bail

2d. against bail—

county ss. *The State of Delaware, to any constable of said county greeting: We command you, that you make known to bail of to appear before one of our Justices of the Peace for the county aforesaid at on the day of next [or instant] to shew, if there be any cause, why execution should not be had against the said bail as aforesaid, of a judgment recovered by against the aforesaid one of the Justices before of the Peace for the county aforesaid on the day of 18 for the sum of with costs.*



*Witness the hand and seal of the last named Justice the day of*

18

122 against  
executors of  
bail

3d. against executors or administrators of bail—

county ss. *The State of Delaware to any constable of said county greeting. We command you, that you make known to administrator [or administrators or executor or executors as the case may be] of deceased who was bail for to appear before one of our Justices of the Peace for the county aforesaid, at on the day of next [or instant] to shew, if there be any cause, why execution should not be had against the said administrator [or administrators or executor or executors] as aforesaid of the said who was bail as aforesaid, of a judgment recovered by against the aforesaid before one of our Justices of the Peace for the county aforesaid on the day of 18 for the sum of with costs. and have then there this warrant.*



*Witness the hand and seal of the last named Justice the day of*

18

against ex'rs  
of surety

4th against executors or administrators of a surety, observe the last form in all respects, excepting that instead of the word "bail" where it occurs, use the word "surety."

123 Death of  
party  
(Constitution  
76)  
(Joint Actions  
1)  
124 survivor  
125 ex'or or  
adm'r  
126 process  
to make ex'r  
or adm'r a  
party

(132)

And the death of the party shall not abate any action pending before a Justice or any appeal or right of appeal under this Act or any certiorari; but if there be several plaintiffs or defendants and one die, the action or proceeding shall continue and be prosecuted for or against the survivors or survivor; if the sole or only remaining plaintiff or defendant die, the executor or administrator of the deceased party may become or be made a party and prosecute or defend in place of the deceased party. To make an executor or administrator of a defendant a party before the Justice, he must issue a summons according to the form herein first prescribed for a summons with this addition after the words "is demanded," to wit; and on which cause of action, an action was commenced against the said [the name of the deceased defendant] deceased in his life time and was pending at his death; to which the said [name of executor] executor [or administrator] is required to become a party; which summons shall be returnable as other original summons;

and on service made the executor or administrator shall be made a party and the same proceedings had either for hearing or judgment by default, as in other cases.

Sect. 28. A scire facias may be issued by the Justice, who gave the original judgment, or by any other Justice of this State in either county, with whom a transcript of the judgment, or the docket containing it may be lodged : and it shall bear date of the day, on which it is issued, and the return day shall not be less than five days nor more than sixteen days after the date, and it shall be served in the same manner as a summons, and judgment by default may be given on the service being verified, as in case of a summons ; and all the proceedings, adjournment, trial, judgment, execution and appeal shall be in the same manner and under the same regulations, as hereinbefore contained and provided for causes and proceedings before a Justice of the Peace; but there shall be no stay of execution on a judgment on a scire facias ; nor shall any provision in the fourth section of this Act relative to proceedings against bail be altered or contradicted by this section ; and the Justice shall indorse upon every scire facias the name of the party, at whose suit he issues it ; and if such party be an executor, administrator or assignee it shall be so stated in such indorsement, which shall also express the name of the person, whose executor administrator or assignee such party is : and the Justice shall make and keep fair entries in his docket of every case of scire facias, containing the name of the party at whose suit the scire facias is issued and whether such party be an executor, administrator or assignee and of whom,—the name of the party against whom it is issued and his character whether bail, executor, administrator or otherwise and of or for whom—the judgment, the name of the Justice who gave it, the date of it, and the sum and costs,—and the names of the parties in the judgment and all other particulars and matters touching the proceedings ; which are required in other cases : but there shall be no assignment of a judgment so as to authorize the assignee to proceed thereon in his own name ; except in the case of sureties or joint debtors as herein before provided.

Sect. 29. An execution may be issued upon a judgment (unless the defendant or debtor therein shall die so as to require process against an executor or administrator) at any time within three years from the time, when execution could have first regularly issued, without any scire facias ; and after the expiration of that time without an execution, none shall be issued, until the judgment shall be revived by scire facias ; which shall be according to the form first above prescribed for a scire facias omitting the word " administrator " and the word " deceased," wherever the same occur, and the words " as aforesaid " : and a judgment may be revived against the original defendant or debtor therein without service of the scire facias in the same manner and under the same regulations, as are provided herein in relation to bail when no service can be made : and it shall not be necessary in any case to issue a scire facias to make an executor, administrator or an assignee as aforesaid of a plaintiff or creditor in a judgment a party to it ; but the death of the plaintiff or creditor and the name of the executor or administrator and his being such being suggested upon the

127 Scire facias, by whom issued—date & return

128 no stay of execution on judgment upon

129 docket of scire facias

130 Assignee of judgment (119) (Assignment of Bills and Specialties 10 16 21)

131 Execut'n can not issue, after 3 years from expiration of stay, without sci. fa.

(35)  
132 Ex'r, Adm'r or assignee of a plaintiff made party by entry without sci. fa.



docket of the judgment or the assignment being thereon suggested, such executor, administrator or assignee shall thereby become and be a party to the judgment with all rights as such.

133 Clause  
in execution  
for summon-  
ing Garni-  
shees

Sect. 30. If a plaintiff or creditor in any judgment, upon which an execution can be issued, shall request it, a clause may be added to the execution for summoning the garnishees of said defendant to appear before the Justice at the return of the execution: which clause shall be according to the following form, and we further command you to summon the garnishees of the said and every of them to be found within your bailiwick to appear before one of our Justices of the Peace for the county aforesaid at on the day of next [or instant] to answer what goods, chattels, rights, credits, monies or effects of the said may be in the hands of such garnishees or either of them respectively.

134 Attach-  
ment

Sect. 31. If any person or persons having a cause of action within the jurisdiction of a Justice of the Peace or any credible person for him, her or them shall before a Justice make oath or affirmation (to be reduced to writing, signed by the person making it and certified and filed by the Justice) that the debtor or defendant is justly indebted to such persons or person in the sum of [specifying the amount of the demand] and does not reside in the State [or has absconded from his or her usual place of abode] [or as is believed has gone out of the State with an intent to defraud his or her creditors; in every such case the Justice shall instead of a summons or capias issue an attachment according to the following form:

county ss. The State of Delaware to any constable of said county greeting: We command you, that you attach the goods and chattels, rights and credits of a non resident [or absconding] debtor, in order to make good to a cause of action, wherein the sum of is demanded; and that you summon the garnishees of the said and every of them to be found within your bailiwick to appear before one of our Justices of the Peace for the county aforesaid at on the day of next [or instant] to answer what goods, chattels, rights, credits or effects of the said may be in the hands or possession of said garnishees or either of them respectively; and have you then there this warrant with your doings hereon duly certified.

Witness the hand and seal of the said Justice the day of

{ L. S. }

18

135 Goods  
taken on at-  
tachment

136 return

Sect. 32. If any goods or chattels shall be taken upon an attachment issued instead of a summons or capias, an inventory of such goods and chattels shall be made, and the same shall be appraised by two judicious freeholders of the county upon oath or affirmation; and such inventory and appraisal shall be returned and filed with the attachment; and the constable shall be responsible for the safe care and keeping of such goods and chattels; and after judgment against the defendant the said goods and chattels or such part, as may be necessary, shall be sold by virtue of an execution to be issued on such judgment as in other cases; but if

any of the goods or chattels be of so perishable a nature or in such condition, that the same cannot be kept without spoiling or considerable injury, till a sale can be so effected, the Justice may make an order for a prior sale; which shall be made in like manner as sales on execution; and the constable shall hold the money to be applied to the judgment or restored to the debtor as to right may appertain; and if any goods or chattels shall be taken or any garnishee summoned upon an attachment, then the Justice shall within one week after the return thereof make out and certify under his hand and seal at least five notices stating the names of the parties in the attachment, the sum demanded by the plaintiff—the attachment,—to wit, the issuing thereof and the date and the return and whether the oath or affirmation states that the defendant does not reside in the State, or has absconded, or has gone out of the State to defraud his creditors,—and shall cause one of said notices to be posted in some public place in his office and one other to be posted in one of the most public taverns in the place of holding the courts in his county and the others in three of the most public places of the hundred wherein the defendant had his last place of abode in the county, or if he had no such place of abode within two years, then of the hundred where the Justice shall reside; and proof of such notice being made, judgment may be rendered at the expiration of five weeks from the return of the attachment; and the Justice shall have authority to order the constable or the plaintiff to set up said notices; but if the plaintiff shall be so ordered, he shall make proof of his compliance by a credible witness: and in every case the plaintiff shall be held to make proof of his demand, if the same be under five dollars and thirty-three cents, before the Justice, if the same exceed that sum, before freeholders to be appointed and summoned as in case of a claim of trial by freeholders and who are to be sworn or affirmed and report as upon a trial pursuant to such claim: but nothing in this section shall extend to an execution attachment.

Sect. 33. If any garnishee summoned on execution attachment or other attachment (which summons may be made by the constable either upon the garnishee personally or by a copy left at his place of abode at any time before the return of the attachment) shall refuse or neglect to appear according to the requirement of such summons, the Justice shall have full power to issue an attachment against such garnishee and thus compel his appearance: which attachment shall be in the form of the capias herein before prescribed omitting the words "touching a cause of action where—" in the sum of \_\_\_\_\_ is demanded," and using, in place thereof, the words *as garnishee of* [the debtor]; but service of the summons shall be proved before issuing the attachment.

Sect. 34. The plaintiff in his election may require a garnishee to answer on oath, or if conscientiously refusing to take an oath, on affirmation, or to plead: and if the plaintiff shall not be present, when the garnishee shall duly attend pursuant to the summons, the answer of the garnishee shall be taken by the Justice: if the garnishee shall in his answer upon oath or affirmation declare, that at the time of serving the attachment or at any time after there were not in his [or her] hands or possession any goods or chattels,

137 Sale of perishable goods (85)

138 proceedings on attachment

139 Judgment when rendered

140 plaintiff must prove demand

(133)

141 Proceedings vs. garnishee not appearing (142)

[20]

142 proof of summons

143 Garnishee to answer or plead

144 answer

- rights, credits, monies or effects of the defendant, such garnishee shall be discharged: and the answer of a garnishee admitting a sum shall be conclusive in the case, and judgment shall pass against him accordingly: A garnishee being required to answer and refusing shall for such refusal be deemed guilty of a contempt and shall be committed, till answer shall be made: and a garnishee swearing or affirming falsely shall be deemed guilty of wilful and corrupt perjury and shall be liable to indictment and punishment accordingly. A garnishee required to plead may deny, that there is any thing of the defendant in his hands or possession, or he may admit specific goods, rights, credits or a particular sum of money and deny any thing more; and in the last case the trial shall proceed as to the balance; and every plea of a garnishee shall be entered by the Justice, and thereupon the cause shall be proceeded in after like manner, as other causes before the Justice instituted by summons, and the rights as to trial and the manner thereof, as to new trial, as to appeal, as to judgment, as to stay of execution, as to costs and the form and course of proceeding shall be the same, as in other causes, and agreeably to the provisions of this Act in such cases: and if on trial, more shall not be found against a garnishee than shall be admitted by his plea, there shall be judgment against him for that sum; but he shall recover against the plaintiff his costs; and in order to determine the plaintiff's right of appeal, he may declare the sum, which he demands against the garnishee, and the demand shall be entered upon the docket of the Justice. There shall be stay of execution upon a judgment given upon the answer of a garnishee, as in other cases; and if by the answer, plea or trial it shall appear, that the garnishee owes a sum payable at a future day beyond the stay in such case, there shall be a stay until such future day without security; and in any case there may be a stay without security merely until the day, when the sum admitted or found will according to contract be payable. But in no case shall judgment be rendered against a garnishee, till there shall be judgment against the original debtor or defendant nor for a greater sum, than the plaintiff shall recover in such judgment inclusive of his costs; and a garnishee shall upon request be admitted to defend the suit against the original debtor or defendant. And if more shall be due from a garnishee, than there shall be judgment for against him in any case, he may be required to answer as garnishee in another case, and so on until the sum due from him shall be fully applied. And if there shall be several garnishees in any case and more than the plaintiff can recover, due, he may elect against whom he will take judgment; and the others shall be discharged from that attachment and may be held to answer in other cases: And the day for a garnishee to answer or plead may be adjourned by a Justice in order to ascertain the determination of prior cases or for other reasonable cause, and the appearance of the garnishee required, or if necessary compelled by attachment, pursuant to adjournment. And a garnishee summoned on an attachment may either at the time of summons or on the return of the attachment or on such reasonable day afterward, as the Justice shall appoint, deliver any specific goods or effects in his hands to the constable, who shall make an inven-
- 145 Garnishee answering falsely—perjury  
(Crimes and Misdemeanors 57)
- 146 plea
- 147 stay of execution
- 148 Judgment—when, & for what sum
- 149 Garnishee may defend suit
- 150 One garnishee owing more than plaintiff's demand—or several, the total am't being more
- 151 Garnishee may deliver up goods

tory thereof and cause the same to be appraised as aforesaid, and the inventory and appraisement, stating by whom the same were delivered, shall be annexed to the attachment.

Sect. 35. If any suit shall be instituted by the defendant in any attachment issued pursuant to this Act against a garnishee summoned upon such attachment touching any matter, which such attachment shall concern, the garnishee shall be allowed in such suit for any goods or effects delivered by him to the constable or for any sum of money, for which judgment shall be rendered against him exclusive of costs in the same manner and to the same effect, as if the garnishee at the time of the service of the summons upon him had delivered said goods or effects or paid said sum of money to the defendant in the attachment. And the constable, to whom any goods or effects shall upon any attachment be delivered and the sureties in his bond shall be held by force of his bond to keep safely all such goods and effects and to have the same forthcoming to be taken in execution upon the judgment, that shall be rendered against the defendant, or if no such judgment shall be rendered, to be restored to the owner, and to account for all monies arising from the sale of any such goods or effects and to pay the same to the persons entitled.

152 Garnishee protected against defendant

153 Constable held to acc't for the goods

Sect. 36. If the defendant in attachment or his agent or attorney shall appear and offer sufficient bail therein, the goods, chattels, rights, credits, monies or effects, that shall have been taken by virtue thereof, shall be discharged therefrom and restored to the defendant; and the garnishees summoned by virtue thereof shall be dismissed and all proceedings against them annulled: also if the defendant in an attachment or his agent or attorney shall within one year after judgment appear and offer sufficient bail to the attachment, the judgment shall be set aside: and in each of said cases bail shall be entered in the same manner, as upon a capias, and shall be liable in all respects as bail entered in the case of a proceeding by capias and according to the provisions herein contained in that respect; and after entry of bail the cause shall proceed in the same manner, as if it had been commenced by capias; and any sum, which the plaintiff shall have received by force of his judgment shall be allowed to the defendant on the trial in like manner as another demand; but the plaintiff shall recover all his costs in such proceeding, unless a sum shall be determined to be due to the defendant and judgment rendered for him therefor; so that if it appear that the plaintiff received on his judgment no more than he ought to have received he shall recover costs. But this section shall not apply to an execution attachment.

154 Attachm't dissolved on bail

155 defend't appearing within year after judgment: trial

Sect. 37. If any person or persons shall commence or prosecute any suit or action in the Supreme Court or Court of Common Pleas or otherwise than before a Justice of the Peace upon or for any cause of action, of which a Justice of the Peace shall according to this Act have jurisdiction, such person or persons shall not in such suit or action recover any costs whatever; and if the nature of the cause of action be within the jurisdiction of a Justice of the Peace according to this Act and if the plaintiff shall not thereupon recover more than fifty dollars exclusive of costs, the recovery

156 No costs in suit in Ct. for demand cognizable before Justice

157 recovery conclusive,

unless plain-  
tiff make affi-  
davit

ry shall be conclusive and costs shall be disallowed; excepting only that if the plaintiff or one of the plaintiffs shall make oath or affirmation before issuing the writ before the clerk of the court or prothonotary or the deputy of the clerk or prothonotary or some Judge of either of the courts, *that the person or persons to be named as plaintiff or plaintiffs in the writ has or have a just cause of action against the person or persons to be named defendant or defendants therein and that such cause of action does exceed in value fifty dollars*, and such oath or affirmation shall be reduced to writing, signed by the party making it, certified by the officer or Judge and filed in the cause, then the foregoing provision depriving the plaintiff of costs shall in such case be dispensed with.

158 Satisfac-  
tion of Judg-  
ment—when  
to be entered  
by creditor

Sect. 38: It shall be the duty of a creditor in every judgment before a Justice receiving satisfaction thereof in any manner other than from an officer in pursuance of an execution to cause satisfaction of such judgment to be entered on the docket thereof within ninety

159 when by  
officer

160 forfeiture  
for neglect

days after receiving the same; and any officer, who shall receive the amount of a judgment after execution returned, or so that such receipt does not appear by his return, shall within ninety days after the receipt cause the same to be entered upon the docket of the judgment and of the execution. And every person, who shall refuse or neglect to perform the duty hereby enjoined, shall forfeit and pay to the debtor or debtors in the judgment or his, her or their executors or administrators any sum not exceeding one half the judgment, as may be determined in the case, to be recovered with costs of suit before a Justice of the Peace in like manner, as other debts under this Act.

161 Dockets,  
&c of Justices  
whose term  
expires, &c.

Sect. 39. It shall be the duty of every person, who shall have been a Justice of the Peace and whose term of office shall expire and who shall not be reappointed, to deposit within ninety days after the expiration of his term of office his dockets and all his records with his successor in office, if appointed within that time and within three miles of his place of abode, and if not, then with one of the nearest Justices of the Peace in the same county; and also upon the decease of a Justice of the Peace it shall be the duty of his executors or administrators or any person, into whose hands his dockets and records shall come, to deposit within thirty days after the decease of such Justice his dockets and all his records with his successor in office, if appointed in that time and within three miles of the place of abode of the deceased Justice and if not, then with one of the nearest Justices of the Peace of the same county: and any person, who shall neglect or refuse to perform the duty above enjoined, shall for every such refusal or neglect, be liable to indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery and shall on conviction be sentenced to pay a fine not less than twenty dollars nor exceeding one hundred dollars with the costs of prosecution; and the court shall make an order for the delivery of such dockets and records according to the true intent of this Act, they naming the Justice, to whom the delivery shall be made, and may enforce the execution of this order by authorizing and requiring the sheriff to carry it into effect, and may punish disobedience of the party as a contempt by fine and imprisonment.

162 to be de-  
livered, &c.

163 penalty  
for neglect

164 & the de-  
livery to be  
enforced

Sect. 40. *And be it declared and enacted*, That it is the duty of a Justice of the Peace upon application to him made by any party to an action or judgment commenced or given before or by him or contained in any docket or records of a former Justice deposited with him or by the executor or administrator of a party or by any person interested or concerned in such action or judgment, the proper fee being first paid or tendered, to make and certify a true transcript of all the docket entries as well on the execution docket as the original docket of and touching such action or judgment, or if specially required a full and true copy of the entire record and proceedings embracing all warrants, process, returns, reports, executions, returns, inventories, proceedings and entries of and touching such action or judgment as fully and amply, as the same are before him or in his possession; and such transcript as well as such copy shall be certified under the hand and seal of the Justice and shall be received as evidence in any court: and if any Justice of the Peace shall refuse or neglect to perform the duty above declared, he shall be deemed guilty of a misdemeanor and shall be liable to indictment therefor and on conviction shall be sentenced to pay a fine not less than twenty nor more than one hundred dollars and the costs of prosecution; and further such Justice shall for such neglect or refusal be answerable to any person or persons aggrieved for all damages, which such neglect or refusal may occasion, with costs of suit in an action on the case; but the fees for making such transcript or copy must be paid or tendered at the time of the application or the Justice shall not be bound to comply therewith. Upon an appeal the Justice shall make out a transcript of the docket entries as above specified, unless a full copy shall be specially requested: upon a certiorari the Justice shall make out a full copy of the entire record and proceedings as above described. And if any Justice shall falsely certify any transcript or copy of the docket entries or of the entire record of or touching any action or judgment, or shall practice or use any fraud, falsehood or deceit in making or certifying any copy or transcript of the docket entries or of the record of or touching any action or judgment, or shall in making any transcript or copy omit any matter materially affecting or concerning what shall be contained in such copy or transcript, every Justice so offending shall be adjudged guilty of a high misdemeanor in office, and shall be liable to indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery, and shall on conviction be sentenced to pay a fine not exceeding one hundred dollars, with costs of prosecution, and shall further pay to the party aggrieved double damages and costs to be recovered in an action on the case:—and the record of such conviction upon indictment being transmitted to the Governor by order of the court, whose duty it shall be to make such order, the Governor may remove such Justice from office.

Sect. 41. If a witness summoned to give evidence in a case pending before a Justice, whether the trial be before freeholders or before the Justice, shall refuse or neglect to attend or refuse or neglect to be duly sworn or affirmed or to give evidence, the Justice shall have full power to issue an attachment against such witness, to adjudge him guilty of a contempt and to fine and commit

165 Copies of records

166 duty of Justice in this respect

167 Copies, evidence

168 penalty on Justices for neglect

169 fees must be paid or tendered

170 Copies on appeal and certiorari

171 false or fraudulent copy—penalty

(Constitution 92)

172 Witnesses attachment

him and to proceed against him in all things for a contempt ; and any costs shall be paid by the witness, if the Justice shall so order; but no attachment shall issue for non attendance, until the summoning of the witness be proved, nor shall any witness be liable to be fined for non attendance, nor committed in such case except for payment of costs. And the form of a subpoena for witness shall be as follows :

173 Subpœna  
for witness

*county ss. The State of Delaware to any constable of said county greeting ; Summon [the names of all the witnesses mentioned to the Justice on one side] to appear before one of our Justices of the Peace for the county aforesaid, at on the day of next, [or instant] to give evidence in a cause between plaintiff and depending before our said Justice ; and this they may not omit at their peril.*

*Witness the hand and seal of the said Justice the day of*

L. S.

18

174 Summons  
for freehold-  
ers

and a summons for freeholders shall be in the same form as the above, omitting the words " to give evidence in," and substituting therefor the words to try.

The form of an attachment shall be as follows :

175 Attachm't  
for witness

*county ss. The State of Delaware to any constable of said county greeting : Bring [the names] before one of our Justices of the Peace for said county at on the day of instant, [or next] to give evidence in a cause between plaintiff and defendant, the subpoena having not been obeyed :*

*Witness the hand and seal of the said Justice the day of*

L. S.

18

or an attachment may be returnable forthwith, in which case omit the part " on the day of instant," and in place thereof use the word *forthwith*.

176 Deposi-  
tions

Sect. 42. If a material witness in any cause before a Justice shall reside without the county, and it shall not be practicable for the party to procure the attendance of such witness before the Justice to give evidence in the cause ; upon this being made to appear by oath or affirmation to the satisfaction of the Justice he may make a rule, that the deposition of such witness shall be taken before some person or officer by him to be appointed or mentioned ; and unless it shall be otherwise agreed, the party applying for such rule shall file in writing with the Justice all the questions to be proposed to such witness, giving at least four days notice to the opposite party of such filing : and the opposite party may file other questions ; and the rule shall be forwarded to the person or officer named to take the depositions with a copy of the questions filed on both sides ; and neither party shall be present at the taking of a deposition ; and no other questions, than those filed as aforesaid, shall be proposed to the witness, which shall be answered on solemn oath or affirmation ; and the deposition shall be signed by the witness and certified by the person taking it and returned seal-

ed up to the Justice : and the Justice shall transmit with every rule to the person or officer mentioned or appointed to take the deposition a copy of so much of this section, as prescribes the mode of taking the deposition.

Sect. 43. This Act shall not be construed to authorize a Justice of the peace to commence an action at the suit of a collector, his executors or administrators for the recovery of any tax or taxes excepting only in the following cases, to wit; in case the person liable to pay the tax or taxes shall have removed from the county, and also in case the person liable to pay the tax or taxes shall have died without paying the same and his executors or administrators shall have refused or neglected to pay the same for ten days after demand made. 177 Suits for taxes  
(Levy Ct. 56)

Sect. 44. Any person who shall be imprisoned by virtue of execution or other civil process issued pursuant to this Act, whatever may be the sum in such execution or process, and who shall be an insolvent debtor or poor person, shall be entitled to the benefit of the laws of this State touching the discharge of insolvent debtors or poor persons from imprisonment or adjudging them to serve their creditors, provided such person shall come within the provisions of such laws. 178 Insolvent debtors

Sect. 45. The following fees and no other shall be allowed for services under this Act, viz : 179 Fees

To a Justice of the Peace	\$	cts.	
For issuing a summons, capias, scire facias or attachment (except execution attachment)	0	13	180 Justices (Fees 2)
For one subpoena for witnesses	0	10	
For a second do. for same party in same case ;	0	05	
but more than two subpoenas shall not be taxed for the same party in any case; if more be issued at the request of a party the same shall be at his proper charge and at the allowance of 5 cents each subpoena :			
For appointing, summoning and administering oath or affirmation to freeholders to try a cause;		20	
but only one fee of this kind shall be allowed in any case, except there be a new trial and then only two fees			
For entry of bail or surety ; but only one fee shall be allowed although there are several bail or sureties		10	
For entering judgment		10	
For entering judgment by virtue of an obligation and warrant and filing the same		25	
For every oath or affirmation certified and filed in a cause pursuant to this Act		13	
For entering rule for taking depositions		10	
For a transcript of all the docket entries in a cause duly certified		20	
For a full copy of the entire record and proceedings in a cause duly certified		37½	
For copying interrogatories one cent for every line of twelve words			
For every execution, whether with clause of attachment or otherwise		15	
For receiving, filing and entering the return of such execution		10	



## To a constable

181 constables	For serving and making due return of a summons, capias, scire facias, whether there be one or several defendants, including mileage and all other services in the cause previous to judgment, excepting summoning witnesses and freeholders	\$ cts. 0 33
	If a defendant cannot be found, so that no service can be made, no fee shall be allowed, except in case of scire facias whereupon judgment shall be rendered and then the above fee shall be taxed;	
	For summoning the freeholders for the trial of a cause; one fee only to be allowed in a cause, excepting in case of a new trial and then only two fees	20
	For summoning each witness	10
	For mileage in summoning witnesses at the rate of two cents per mile out and in, to be computed from the place, where the subpœna shall be returnable, to the residence of the witness, but if there be more than one witness for a party, then to the residence of the most remote witness, adding thereto such distance, as it shall be necessary to travel to summon the other witnesses for the same party proceeding in the most direct way; and the computation of mileage in summoning all the witnesses for the same party shall be made in the same manner and upon the same principles, as if they were all named in the same subpœna and summoned at the same time, although they may be named in different subpœnas and summoned at different times.	
	For summoning garnishees, whether upon an execution attachment or other attachment including mileage and whatever number of garnishees may be summoned	35 25
	For serving an attachment for bringing the body; but if such attachment shall issue through any fault of an officer he shall be ordered to pay this fee and the fee for issuing the attachment.	
	For taking or receiving goods upon an attachment issued as original process and not an execution attachment, and making and returning inventory and appraisement, including mileage, if the goods shall not exceed in value \$ 15	40 80
	If they shall exceed that sum; but if the goods shall be sold on execution no fee shall be charged for taking or appraising on such execution.	
	On execution	
	For taking goods	20
	Summoning and qualifying appraisers and making inventory, appraisement and return, including mileage	20
	Advertising and selling in all cases, in which the sum contained in the execution shall not exceed fifteen dollars, exclusive of costs;	20
	but if the sum contained in the execution shall exceed fif-	

teen dollars, exclusive of costs, then double the said fees shall be allowed for the same services.

In no case shall there be a fee charged for a service not performed.

For conveying a person to gaol under execution or other commitment \$ cts.  
0 20

and mileage at the rate of two cents per mile from the place of arrest to the gaol and returning to the office of the Justice.

But mileage shall not be allowed in any case in which it is expressly given.

A sheriff shall receive, upon an execution directed to him the same fees as above allowed to a constable for the same services.

182 sheriffs

To a witness

For each days attendance

20 183 witnesses

and mileage at the rate of two cents per mile from the residence of the witness to the place of trial and returning; but no mileage shall be allowed if the demand be under \$5 33;

To the freeholders trying causes

To each of them, per day

30 184 freeholders

and mileage as is provided by law for jurors but no fee shall be allowed to any freeholder, who shall not act till the determination of the cause by the freeholders

To the parties respectively

For each deposition taken

25 185 parties  
for depositions

but more than one dollar shall not be allowed to any party for depositions in any case.

Upon the appeal

To the clerk or prothonotary

For entering the appeal, issuing summons, entering return and all continuances

186 Fees, upon appeal—  
clerks

For every subpoena for witnesses

1 00

For every attachment issued

20 (Fees—114)

For every commission to take depositions

40

For entering final judgment or order dismissing appeal with judgment for costs

40

For certificate under hand and seal, that appeal has not been entered

50

For a copy duly certified of record of an order dismissing an appeal with judgment for costs and the bill of costs duly taxed

25

For a copy in other cases the rate of one cent for every line of twelve words, and twenty-five cents for the certificate.

50

Bills of costs to be taxed, satisfaction of judgment entered, and the returns of execution docketed, without fee

To attorneys at law

For appearance for plaintiff or defendant

2 67 187 attorneys

To the sheriff or coroner

For serving summons or subpoena, the same fees as herein before allowed to a constable for summoning witnesses before a Justice.

188 sheriffs  
(Fees—116)

	To a witness	
189 witnesses	For attendance and mileage, the same fees as herein before allowed therefor before a Justice ;	\$ cts.
190 justices	To a Justice, for transcript of record	0 20
	To each party	
193 parties for depositions	For depositions, each deposition	50
	but more than five dollars shall not be allowed for depositions	
	Upon a certiorari	
194 Fees, upon certiorari, of clerks	To the clerk, for issuing the writ, taking recognizance with surety and certifying the same and receiving and filing record	50
	For issuing citation	25
	For a second or subsequent writ of certiorari, to be paid by the Justice if occasioned by his default	50
	For entering judgment	50
	For a copy of record, the rate of one cent for every line of twelve words with twenty-five cents for certificate	
	To a Justice,	
195 justices	For full copy of the entire record and proceedings	37½
	To sheriff	
196 sheriffs	For serving citation, the same fees as for serving summons on appeal :—	
	To attorneys at law	
197 attorneys	For appearance for plaintiff or defendant	2 67
198 costs on reversal	And upon the reversal of a judgment given by a Justice, the plaintiff in the certiorari shall recover his costs ; and upon affirmance of such judgment, costs shall be awarded to the defendant in the certiorari ; and a party or his attorney applying for a writ of certiorari to be directed to a Justice of the Peace shall offer before the Clerk of the Supreme Court sufficient surety or sureties to be by him approved, to enter into a recognizance to the defendant or defendants in such writ in a reasonable penalty with condition to be void if such writ shall not be allowed, or if the plaintiff therein shall prosecute said writ to effect and pay the condemnation money and all costs or otherwise abide the judgment of the Supreme Court in the case, if he fail to make his plea good : Which recognizance shall be entered by the clerk in his docket succeeding the entry of the certiorari : but surety shall not be required a second time in the same proceeding, although other writs may be issued to complete the record ; but the court may order better security : upon a writ the clerk of the Supreme Court shall indorse these words <i>Recognizance taken and approved</i> , or the Justice shall not obey it. And furthermore, the following fees shall be allowed to Justices of the Peace for the following services.	
199 security on certiorari	For taking the acknowledgment of a deed, whether there be one or more persons making the acknowledgment, to each Justice	50
	For taking an indenture of apprenticeship or servitude (one Justice acting alone) for all the services touching said indenture including the drawing the same and acknowledgment thereof	1 00
200 better security	For approving, writing and certifying an assignment of an indenture	20

- For taking the acknowledgment of a manumission, whether § cts.  
one or more slaves be named therein 0 20
- For a probate against the estate of a deceased person, if drawn  
by the Justice 7  
if not, without fee
- For taking a deposition or affidavit, not hereinbefore provided for 20
- For binding an apprentice by two Justices or by one Justice  
and a Trustee of the Poor, to each Justice, for all services  
touching the same, to be paid by the master 50
- And no Justice of the Peace, Clerk, Prothonotary, Constable or 201 Officers  
Sheriff shall on making out a bill of fees in any cause commenced before a Justice pursuant to this Act or on any appeal from a judgment given in such cause or in any certiorari of such judgment either generally or for the service of any process or other particular services in such cause or on such appeal or certiorari, add any item not hereinbefore expressly allowed; and it shall be the duty of each of the said officers upon receiving any fee or fees to make a bill specifying the items and the case and to give a receipt thereupon: and no constable shall receive a bill of fees, till the Justice shall have taxed it: and if either of the said officers or his executors or administrators shall take any greater or more fees, than are hereinbefore allowed for the services or duties aforespecified or any of them, or shall refuse to make a bill specifying the items as aforesaid and to give a receipt thereupon upon receiving any fee or fees, or shall add any item not hereinbefore expressly allowed in such bill; every such person so offending shall be liable to indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery, and shall on conviction be sentenced to pay a fine not exceeding sixty dollars and the costs of prosecution. 202 bills and receipts  
203 constable not to receive bill of fees till taxed
- Sect. 46. Every Justice of the Peace shall keep posted or hung up in his office for the inspection of all persons a printed list of the fees of a Justice and constable for all services under this Act; and a printed copy of the thirty-eighth section of this Act. 204 penalty  
205 list of fees & copy of sect. 38-to be hung up in Justice's office

Passed at Dover Jan. 29, 1825.

## X.

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. 1829

Section 1. 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 chattels and for direct and immediate injuries to real property, when the damages claimed in such action do not exceed fifty dollars. 206 Jurisdiction of trespasses (207)

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 206 Proceedings (208) (IX.)

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, 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.

(17-49-57—  
60-64-134—  
135-154-156)  
  
207 statem't  
of injury be-  
fore process  
  
208 summons  
or capias how  
varied  
(19-20)  
  
209 costs pay-  
able by Jus-  
tice in certain  
cases

210 Freehold  
claimed, ac-  
tion removed  
to S. C. or C.  
C. P. on se-  
curity

211 Entry by  
Justice

212 signed by  
surety

213 Assault &  
battery, sub-  
mitted

214 submis-  
sion signed

Provided, that if in 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 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 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.*

Sect. 2. 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 cost 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.

215 fine not to exceed \$10

216 commitment

It shall not be lawful for the Justice in any case to receive the fine by him imposed or the costs.

217 Justice not to receive 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.

218 Adjournment

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 recognizance upon payment of costs.

219 settle'm't

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 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.

220 cases proper for higher tribunal

*Passed at Dover, January 30, 1829.*

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## LANDLORD AND TENANT.

### I.

#### AN ACT concerning Landlords and Tenants.

1829

Section 1. 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, devisees, executors or administrators or he in his immediate reversioner 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 sever-

1 Rent distrained for  
3 Blac. Com 6—15  
Bac. Abridg't distress, A.  
2 who may distrain

3 What may be distrained

- 3 Blac. Com. ed, in sheaves, stacks or otherwise as the horses, cattle and other  
10 goods and chattels being upon said premises: except goods and  
4 exceptions 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 regu-  
lar 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  
3 Burr. 1498 a drover depastured while passing through the country, as well  
3 Blac. Com. as to the more obvious cases of exemption (a) according to  
5 & u. 4 the common law; and also except stoves not the property of, but  
hired by, the tenant and beasts not the property of the tenant, es-  
caping into the demised premises through defect of fences, which  
the tenant or his landlord was bound to repair.
- 5 Goods fol- If the tenant, either during his term or estate or after the end  
lowed & dis- thereof, remove his goods and chattels or any part thereof from  
trained off the demised premises without payment of the rent due or growing  
the premises due for the said premises, and without license from the landlord or  
his agent in writing under hand, the goods and chattels so re-  
moved, 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 ar-  
rear at the time of the removal, for forty days after the rent shall  
become in arrear. Notice to the tenant to remove from the demi-  
sed premises shall not be a license within this provision.
- 6 Unreasona- Every distress shall be reasonable and not too great; any per-  
ble distress son taking an unreasonable distress shall answer the damages to  
3 Blac. Com. the party injured in an action on the case.  
12
- 7 Notice of Sect. 2. The person or bailiff distraining as aforesaid shall  
distress either deliver to the tenant or leave at the mansion house, or if  
there be none at the most notorious place on the demised pre-  
mises 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 free-  
holders 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.
- 8 Replevin in If the rent be not of money, the said sheriff, under sheriff or con-  
five days, or stable shall also summon the said appraisers and another judicious  
appraisement 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 wit-
- 9 Rent, not of money, valued

(a) More obvious cases of exemption at common law are, when a tenant has in pos-  
session goods of another in the way of trade; as a horse at a smith's shop to be shod;  
in a tailor's shop cloth or garments of a customer; horses, cattle or goods of a guest in a  
tavern; grists in a mill; &c. Co. Lit. 47 a & n 1. Com. Di. Distress C.

nesses; 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:

— county, ss. Upon a distress for rent on the demand of — 10 Certificate  
against — — We the freeholders summoned to determine the of value  
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 final unless  
value so certified shall not be questioned except upon replevin of replevin  
the goods distrained. No further certificate, either of the summon-  
ing or the swearing or affirming of the freeholders, shall be ne-  
cessary; if all the freeholders be sworn, or if all be 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 11 Sale  
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 ap-  
praisement of said property, giving notice of said sale by adver- 12 Notice of  
tisements posted in at least five of the most public and suitable sale  
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 13 Surplus  
rent and costs, it shall be refunded to the owner or applied accor-  
ding to law without delay. If through mistake or other cause a  
sufficient distress be not taken, distress may be made for the bal-  
ance of the rent in the same manner, as for the entire sum.

It shall not be an objection to any officer acting in any of the  
premises, that he as bailiff made the distress.

Sect. 3. 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 situ-  
ate: 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 ap-  
praised 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 situated; in the same  
manner, as if every part of said premises was in said county.

The person, on whose demand a distress is made, shall have a 17 Distrai-  
special property in the things distrained until replevin or sale ner's property  
thereof, so that he may take the same wherever found and recover in distress  
damages for carrying away or injuring them.

In case of the property distrained remaining or being impound- 18 Rights of  
ed on the demised premises, the distrainer and every other person purchasers &  
shall have right to go upon said premises to view, appraise or pur- others

10 Certificate  
of value

11 Sale

12 Notice of  
sale

13 Surplus

14 second  
distress  
3 Blac. Com.  
11-12

Woodfall 395  
2 Sellen 268-  
269

15 Distress  
left on premi-  
ses, or im-  
pounded—  
but not remo-  
ved from  
county

16 demised  
premises ly-  
ing, parts in  
different  
counties

17 Distrai-  
ner's property  
in distress

18 Rights of  
purchasers &  
others



chase 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.

19 Pound  
breach and  
Rescue

Sect. 4. 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.

20 Distress &  
sale—when  
no rent in ar-  
rear—penalty

Sect. 5. 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.

21 Irregulari-  
ty not to vi-  
tiate distress—  
special dama-  
ges therefor

Sect. 6. 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.

22 Bond on  
replevin

Sect. 7. The sheriff or his deputy or the coroner having a writ of replevin for property distrained shall before 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:

23 Condition

*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.*

24 Avowry or  
cognizance

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 demurrer 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.

25 Rent  
found by  
jury

—determined  
when no trial  
by jury

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 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.

26 Judgment for rent

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.

27 Assignm't of bond

Sect. 8. 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.

28 Husband's remedy

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.

29 one entitled for another's life

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.

30 Debt

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.

31 Ex'rs - Adm'rs

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.

32 Apportionment of rent according to time

Satisfaction for the use and occupation of lands, tenements or hereditaments by permission 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.

33 Use and occupation  
Bac. abr. rent.  
K 366  
Woodfall 420

Sect. 9. 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

34 Tenant intending to remove his effects from county--

Attachment  
(40)

35 Proceedings

36 issue

37 costs

38 overplus

39 Tenant  
about to leave  
State & not  
sufficient  
goods that  
can be at-  
tached

(Attachment  
21)

40 only one  
year's rent

41 Goods tak-  
en on execu-  
tion, &c. lia-  
ble to 1 year's  
rent of money

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 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 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.

The court in respect to the costs and touching the premises generally may exercise equitable powers.

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.

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.

Sect. 10. 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, attachment 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.

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 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.

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.

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.

42 Grain or produce liable to the rent in kind—in preference to execution

43 sold on execution subject to such rent

44 not to be removed without payment

45 Notice to Landlord of sale of Tenant's goods

46 Goods in execution may be distrained

47 Notice of such distress

48 Straw,  
Manure, &c.  
not to be re-  
moved

49 restriction

50 Entry un-  
der agreem't  
to pay rent, a  
lease—if  
no term limit-  
ed—for 1 year

51 if 3 months  
notice not  
given the term  
extended for  
one year

52 Tenant  
giving notice  
& not de-iv-  
ering posses-  
sion

(Forcible en-  
try & detainer  
5)

53 or holding  
over against  
notice to him  
(Forcible en-  
try & detainer  
13)

double rent

54 Ejectment  
penalty on te-  
nant not giv-  
ing notice

55 rights of  
landlord

56 Limitation  
of distress for  
rent

Sect. 11. 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.

Sect. 12. 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.

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.

Sect. 13. 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 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.

Sect. 14. An executor or administrator shall not distrain for rent in arrear to the testator or intestate after the expiration of six month 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 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 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. 57 Distress without sale

Sect. 15. The fees upon a distress shall be 58 Fees

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.

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.

Sect. 16. 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. 59 Rent attached  
60 Distress not prevented  
61 power of court

Passed at Dover, February 10, 1829.

## II.

1829

*AN ACT concerning remedies by and against grantees of reversions or remainders in lands, tenements and hereditaments leased.*

62 Remedies  
by & against  
grantees of  
reversions, &c

Section 1. 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.

63 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.*

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## LEGACIES.

1764

*AN ACT for the more easy and speedy recovery of legacies.*

Whereas the proceedings in the Courts of Chancery, within this government, for the recovering of legacies are tedious and expensive;

1 Suits at law  
for legacies

(Executors &  
Administrators—93)

Section 2. It shall and may be lawful for any person or persons, to whom any legacy or bequest of any sum or sums of money or other goods or chattels have been or may be made by the last will and testament of any other person or persons legally made, to commence, sue and prosecute an action of debt, detinue or account render, as the case may require, for such legacy, after it becomes due, in any of the Courts of Common Pleas within this government: And if it shall appear that the legacy or legacies is or are due, and there be sufficient assets in the hands of the executors or administrators with testaments annexed to discharge the just debts of the testator and the legacy or legacies bequeathed, the plaintiff or plaintiffs shall recover, with costs of suit, any law, usage or custom, to the contrary notwithstanding.

2 Abatement

Sect. 3. *Provided always,* That where it shall so happen that there are assets in the hands of any executors or administrators with testaments annexed to discharge all the debts of the testator with an overplus not sufficient to discharge all the legacies which may be given, then an abatement shall be made in proportion to the

legacies so given, unless it shall otherwise be provided by the will. And where any legatee or legatees are or may be under age at the time when such legacy or legacies shall become due, in such case <sup>3 Infant</sup> such legatee or legatees shall and may maintain an action for their respective legacies by guardian or next friend as fully and effectually, as by law they may do in any other actions whatsoever.

Sect. 4. The respective courts, where the said actions shall be commenced, upon the plea of the want of assets to pay all the debts and legacies shall appoint auditors to examine the accounts of the executors and administrators with testaments annexed, who, after full hearing of the parties at such times and places, as by them the said auditors shall be appointed with notice to the parties, shall report how the accounts of the executors or administrators do stand, what assets will remain after payment of all the debts, and what part of the remainder is the proportion, that ought to go towards paying of the plaintiffs legacies, having regard to all such settlements as have been or shall hereafter be made before any court or proper officer or officers, that may have jurisdiction and power to settle the same; for which proportion only, unless it be otherwise provided by the will, the court shall then award execution upon the judgment to be had in the said suit; which judgment shall remain a security for the payment of the remainder of the said legacies and costs, when sufficient assets for the payment thereof come to the executors' or administrators' hands: And where any exception shall be taken by either of the parties to the report of the auditors; it shall and may be lawful for the court, in which the action shall be depending, on hearing of the parties to correct and amend any mistakes or errors, which may happen in the accounts so to be reported.

4 Plea  
want of assets  
—auditors

Sect. 5. The Justices of the courts aforesaid respectively upon consideration of the report of the auditors aforesaid shall according to justice and equity either award no cost or costs out of the testators' estate; or in case the executors or administrators have been faulty in delaying to pay the legacy demanded or a proportional part thereof, without sufficient excuse, then out of the proper estate of the executor or executors, administrator or administrators; any thing herein contained to the contrary notwithstanding.

5 Costs, discretionary

Sect. 6. *Provided always*, That no such suit shall be maintained for any such legacy until reasonable demand made of the executor or executors or administrators with testaments annexed, who ought to pay the same, and an offer made of two sufficient sureties to the said executor or executors, administrator or administrators aforesaid, who, if they think proper to accept thereof, shall become bound to them the said executor or executors, administrator or administrators aforesaid, in double the sum of the legacy given, with condition under written, *that if any part or the whole thereof shall at any time after appear to be wanting to discharge any debt or debts, legacy or legacies, which the said executor or executors, administrator or administrators shall not have other assets to pay, then the said legatee will return his said legacy or such part thereof, as shall be necessary for the payment of the said debts or the payment of a proportional part of the said legacies.* And if the said executors or administrators shall not think pro-

6 No suit till demand and bond to refund



per to accept of such bond, then the said legatees shall file the same with the clerk of the court before obtaining any process against the executor or executors, administrator or administrators; otherwise and in default thereof the process issued shall abate.

† Several legatees—proportionable abatement

Sect. 7. *Provided also*, That where there are or may be several legatees and a return of part of the said legacy sued for appears necessary, in such case each legatee shall only be compelled to return a proportionable part of his legacy so as to make up the whole sum wanting.

*Passed March 31, 1764.*

## LEVY COURT.

### I.

#### 1829 AN ACT concerning the constitution of the Levy Court and Court of Appeal.

1 Commissioners  
(S 9. 12. 14.)

Section 1. The Levy Court and Court of Appeal in each county shall be composed of commissioners for the hundreds respectively in such county as follows:

2 in N. Castle

The said court in New-Castle 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.

3 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.

4 Sussex

And the said court in Sussex county shall be composed of ten commissioners, to wit : one for each hundred in said county.

5 elected  
(11-12)

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.

6 term  
(11-12)

7 vacancy

8 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 hundred or ceases to be a freeholder therein, his office shall thereupon become vacant.

9 disqualifications  
(Officers incompatible)

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.

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.

10 present commissioners

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 thereof to the inspector of each hundred in said county.

12 Clerk of Peace  
—duty

13 Sheriff

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.

13 Oath

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.

14 Quorum  
(16-21)

Passed at Dover, January 30, 1829.

## II.

AN ACT concerning the Levy Court, Clerk of the Peace, Assessors, Collectors and County Treasurers.

1826

Section 1. The Levy Court and Court of Appeal in each county shall meet at the Court House of their county three times in every year, that is to say; on the last Tuesday of September, on

15 days of meeting

- the first Tuesday of February and on the first Tuesday of March, and may adjourn from time to time as occasion shall require ; and one commissioner, if no more shall attend on any day of meeting, or the clerk of the peace, if none attend, shall have power to adjourn the said court.
- 16 adjournm't  
17 Clerk of the Peace  
18 duties  
19 Seal  
20 Assessors qualified (23-24)  
21 their oath  
22 instruct'ns  
(98, 102, 103, 110-121)  
(27)  
(25-34)  
23 other days  
24 quorum (14)  
25 Return of Assessors  
36 their property valued
- Sect. 2. The clerk of the peace in each county shall be the clerk of the Levy Court and Court of Appeal of his county and shall safely keep the books, minutes and papers belonging to said court and shall make full and true minutes of all the proceedings of said court and shall deliver to the county treasurer certified transcripts of all allowances made by the said court of the appointment of collectors and the amount to be collected by each, and of all matters, that shall concern the said treasurer or be requisite for keeping the accounts of the county, and shall observe the orders and rules of the said court in all things relating to the duty of his office: and the seal of office of the clerk of the peace shall be the seal of the Levy Court and Court of Appeal.
- Sect. 3. The assessors of the several hundreds in each county shall appear before the Levy Court and Court of Appeal of their county at the meeting of the said court on the last Tuesday of September and shall each in the presence of said court take an oath or affirmation according to the following form :
- I do solemnly swear (or affirm) that I will perform the duties of my office of assessor truly, diligently and faithfully according to the laws of the land ; that I will spare no person for favor, affection, reward or the hope thereof ; and that I will wrong no person through hatred, prejudice or ill will ; and that I will 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.)*
- And the said court shall give to said assessors instructions by prescribing forms for their returns, and by causing to be read to them the first, fourth, fifth, sixth, seventh, eighth, ninth and tenth sections of the Act "for the valuation of real and personal property within this State" passed February 9, 1796, and the eighth section of the additional supplement to that Act passed January 19, 1797, and the fourth and sixth sections of this Act, and the said court may appoint in case of necessity other day or days for the appearance of the assessors or any one or more of them to take oath or affirmation and receive instructions as aforesaid : and any two of the commissioners of the said court shall constitute a quorum for administering the oath or affirmation and giving instructions to assessors.
- Sect. 4. The assessors shall respectively return their respective valuations and assessments to the Levy Court and Court of Appeal of their county on the first Tuesday of February in every year ; and the Levy Court and Court of Appeal at their meeting in that month shall value the property and determine the personal rate of each assessor ; for which purpose each assessor shall on the first Tuesday of February deliver to the said court a full and true statement in writing under his hand and upon his solemn oath or affirmation of all his property real and personal liable to assessment, setting forth the quantity, situation and improvements of the

real estate; and the clerk of the peace or either of the commissioners of the said court is authorized to administer and certify such oath or affirmation. And the said court may examine, correct and add to the valuations rates and assessments returned by the assessors, and may call before them every person, who ought to have been assessed and shall have been omitted by the assessors, and may require such persons to render a full and true statement of all his or her property, real and personal liable to assessment, and shall with the assistance of the assessors, who ought to have made the valuation, or otherwise make a valuation of all such property and determine the personal rate of all such persons; and such valuation and rate shall be considered in the same manner, as if made and returned by the proper assessor, and placed upon the assessment list of the proper hundred or hundreds: and if any assessor or other person omitted and called upon as aforesaid shall refuse or neglect to deliver to the said court a full and true statement of his or her property as aforesaid; or if any statement delivered shall be false and fraudulent; in either case the said court shall ascertain by the best means in their power the full value of the property, real and personal liable to assessment, of every such assessor or other person so neglecting or refusing to deliver a statement or delivering a false and fraudulent statement, and shall double the value so ascertained; and the amount produced shall be the valuation of such assessor or other person to all intents and purposes; and moreover every assessor, or other person omitted and called upon as aforesaid shall for every neglect or refusal to deliver a statement as aforesaid or for delivering a false and fraudulent statement forfeit and pay to the State a fine not exceeding forty dollars with costs of prosecution to be recovered by indictment in the court of General Quarter Sessions of the Peace and Gaol Delivery: *Provided always* that a statement shall be required from an assessor and a valuation of his property shall be made only at the time when and so far, as such valuation ought to be made according to the sixth section of this Act. And after the said court shall have examined said returns and made such corrections and additions, as to them upon such examination shall seem just and proper, the clerk of the peace shall make, and on or before the twentieth day of February in each year set up and publish in one of the most public places of each hundred in his county an alphabetical list of the names of persons with their respective rates and valuations taken from the assessment list of such hundred, as the same shall stand after such corrections and additions, with a notice of the day of holding the Court of Appeal; which list shall contain and specify as follows, to wit; *in the year in which a general valuation of real and personal property shall be returned*, the said list shall contain the names of all persons upon the assessment list of the hundred and shall specify the real estate of each person, the number of acres and valuation, the number of slaves and valuation, the personal rate and the valuation of personal property, and the total amount of the rate and valuation; *and in the year in which a general rate of persons and valuation of personal property only shall be returned*, the list shall contain the names in alphabetical order of all the persons upon the assessment list of the hundred, whose personal pro-

27 correction  
of returns

28 statements  
required

neglect or  
fraud

(34)

29 Clerk of  
the Peace to  
publish lists,  
& notice of  
day of appeal

30 notice to  
non-resident

31 Assessors  
to attend Levy  
Court

32 Appeal  
(128)

27-28)

33 Assessm't  
List not  
otherwise  
questioned

34 Duration  
of assessment  
list

perty shall be valued or personal rate imposed : and such list shall specify the personal rate, and the number of slaves and the valuation, and the valuation of the personal property, and the total amount of the rate and valuation ; *and in all other years*, the list shall contain only additions or alterations, that shall have been made to or of the assessment list of the hundred : and when any owner of real estate shall not reside in the county, information of the valuation and of the day of holding the Court of Appeal shall be directed by the clerk of the peace to such owner in a letter addressed to the nearest post-officer to him or her, that can be conveniently ascertained. And it shall be the duty of the assessors to attend the Levy Court and Court of Appeal on the first Tuesday of February and on the first Tuesday of March and on such other days, as the same court may appoint under a penalty of twenty dollars for every neglect or refusal to be recovered by indictment with costs.

Sect. 5. The Levy Court and Court of Appeal in each county shall sit, as a *Court of Appeal*, on the first Tuesday of March in every year and on such days and times thence ensuing, as it shall be necessary to adjourn to, and shall examine the rates and valuations made and returned by the assessors and the corrections thereof and additions thereto, that may have been made, and shall receive, hear and determine appeals against any the said rates and valuations, and shall have full power either upon their own examination or upon appeal, to increase or diminish any rate or valuation for just cause, and to call before them any person or persons, whose names ought to be placed on the assessment list and who shall have been omitted by the assessors or by the said court at their former meetings, and to fix the personal rate and make a valuation of the property of such person or persons according to the provisions contained in the fourth section of this Act ; and the said court may require such person or persons to exhibit a statement of his, her or their property respectively ; and a refusal or neglect to exhibit a statement according to such requirement or the exhibiting a false and fraudulent statement shall incur the same consequence and penalty and be liable to the same proceeding, as provided by said fourth section of this Act for the like offences ; and the said court shall have power to arrange all the rates and valuations according to right and justice, so that no person may be unequally or overrated in the county ; and if any rate or valuation shall be in a hundred, to which it does not belong, the said court may transfer it to the proper hundred : and a valuation or assessment list shall not be liable to be called in question elsewhere than in the Levy Court and Court of Appeal ; and the same, as it shall stand in the said court, shall be absolutely conclusive.

Sect. 6. A general rate of persons and valuation of personal property in each hundred in the several counties shall stand and be acted on for six years : and such general rate of persons and valuation of personal property shall be made, so as to be returned on the first Tuesday of February in the year of our Lord one thousand, eight hundred and twenty-eight and every sixth year thereafter : and a general valuation of the real property in each hundred in the several counties shall stand and be acted upon for twelve

years ; and such general valuation of real property shall be made, so as to be returned on the first Tuesday of February in the year of our Lord one thousand, eight hundred and twenty-eight and every twelfth year thereafter : and the present rates of persons and valuations of real and personal property shall stand and be acted upon until the said day and year ; *Provided always*, that the assessor of each hundred shall annually rate the persons of those liable to such rate, who shall have arrived to the age of twenty-one years since the making of the assessment for the preceding year, or who shall come to reside in the county, or who shall before have been omitted, and shall value the personal property of all such persons, new leases taken by lessees of houses in boroughs, towns or villages, new ground rents, any real property that shall have been before omitted, and personal property acquired by bequest ; and every assessor shall also certify and return all descents, alienations and changes in the ownership of real estate within his hundred ; and the person or persons, who by the assessment list, as the same shall be constituted or made by or from such returns, shall appear to have become and to be by reason of any descent, alienation or change the owner or owners of any real estate, shall stand assessed and charged with the valuation thereof then in force : and the return of each assessor with such corrections, as shall be made therein by the Levy Court and Court of Appeal, shall be a part of the assessment list of the hundred, to which it shall belong ; and as such be conclusive.

35 Yearly duties of Ass'rs

36 returns

Sect. 7. The Levy Court and Court of Appeal shall every year calculate and settle the amount of the road tax, which shall include all sums necessary to be raised for the year for purposes concerning causeways, bridges and roads (observing as to the road tax in New-Castle and Sussex counties the proviso (a) to this section), the amount of the poor tax, which shall include all sums necessary to be raised for the year for purposes concerning the poor-house and for the support of the poor and the amount of the county tax, which shall include all other sums of money necessary to be raised for the year to discharge the demands upon the county accrued or which it shall be deemed expedient to provide for, and shall apportion and lay such road tax, poor tax and county tax to and upon the rates of persons and valuations of real and personal property in the several hundreds, as the said rates and valuations shall stand upon the assessment lists of the said hundreds respectively, at and according to a certain rate for each of the said taxes in and upon every hundred dollars of the said rates and valuations, and so *pro rata*. And the said Levy Court and Court of Appeal shall on or before the first Tuesday of April in every year cause to be issued to the collector of each hundred a duplicate, transcribed and certified by the clerk of the peace, of the assessment list of the hundred, for which such collector shall have been appointed, with a warrant annexed to such duplicate ; which warrant shall be under the hands of two or more of the commissioners of the said court and according to the following form, filling the blanks with the proper insertions.

37 Laying Taxes  
(41-42)  
(Roads, &c.  
5-10-31-34-  
36-60-85-90)  
a (41-42)

38 Warrants to Collectors  
(64)

county-ss. *The State of Delaware to the collector of*  
*hundred greeting : We command you, that you collect from*  
*2 Z*

39 form

## LEVY COURT.

all and every the persons named in the duplicate hereunto annexed, for their road tax, poor tax and county tax respectively for the year the following rates in and upon every hundred dollars of the amount of the rates and valuations, wherewith they respectively according to said duplicate stand assessed, and so pro rata, that is to say, the rate of per hundred dollars for the road tax, the rate of per hundred dollars for the poor tax, and the rate of per hundred dollars for the county tax; and if any person or persons named in said duplicate shall neglect or refuse to pay the said rates in ten days, after you shall demand the same, we command you in such case, that you levy and make the said rates or the part thereof remaining unpaid with lawful costs in the manner and by the means and proceedings prescribed by our laws in such case made and provided; and if goods or chattels, lands or tenements of any person so neglecting or refusing cannot be found by you sufficient to satisfy such rates with costs, in such case that you take the body of such person and convey him to the common gaol and deliver him to the keeper of such gaol, who is commanded to receive and detain him in safe custody, till the rates with costs be paid or such person shall be legally discharged: And we further command you, that you pay the amount, which according to this warrant and the annexed duplicate you are required to collect, in the manner and within the times appointed by our laws in this behalf. Hereof fail not at your peril. Given at by order of the Levy Court and Court of Appeal under the hands of us commissioners of the said court the (a) day of in the year of our Lord one thousand eight hundred and

a (61)

Seal of Office  
of the  
Clerk of the Peace.

Attest

Commiss-  
sioners.

Clerk of the Peace.

40 Seal

41 Road tax  
in Newcastle  
(Roads, &c.  
60)

42 & Sussex  
(Roads 5. S. 9.  
85. 94. 10)

And every warrant shall be sealed with the seal of the clerk of the peace and attested by him according to the foregoing form. Provided always, that the Levy Court and Court of Appeal in New-Castle county in calculating and settling the road tax shall include only such expenses and charges, as shall be properly chargeable upon the county according to law, and not any such sum as is to be ascertained by the commissioners of the roads in the several hundreds in said county, whose powers or duties shall not be impaired, altered or in any manner affected by this Act: And also, that the Levy Court and Court of Appeal in Sussex county in calculating and settling the road tax, shall have respect to and be governed by the law prescribing what expenses and charges shall be borne by the hundreds respectively and what expenses and charges shall be borne by the county in relation to roads, bridges and causeways; and this Act shall not alter or affect any law relative to the manner, in which such expenses and charges in said county are to be borne; and also that this Act shall not impair, alter or affect any legal provisions for discharging the road tax in Sussex county by work and labor or materials.

Sect. 8. If any person or persons shall refuse or neglect to pay to the collector in ten days after demand the amount of all the rates, which such collector according to his duplicate and warrant shall be required to collect from him, her or them respectively or any part thereof, it shall be the duty of the collector and full power is hereby given to him to levy the said amount or the part thereof unpaid with costs by distress and sale of the goods and chattels of the person or persons so refusing or neglecting; and any surplus, that may be raised by the sale over the sum required, shall be paid to the owner of the goods without delay; and notice of every such sale shall be given by advertisements posted in at least four of the most public and convenient places of the county, two of which shall be in the hundred of said collector: and if the owner or owners of any lands or tenements in any hundred shall not reside in the hundred, where such lands or tenements are situate, or shall be minors, or shall neglect or refuse to pay the rates laid upon the valuation of such lands or tenements in ten days after demand thereof, it shall be the duty of the collector and he shall have power to collect the rates laid upon such valuation from the tenant or tenants or persons occupying and having charge of such lands or tenements, and to levy and make the same with costs by distress and sale of the goods and chattels of such tenant, tenants or other persons, if payment shall not be made in ten days after such tenant, tenants or other persons shall be required to pay such rates; and the sum that shall be paid by or levied from such tenant, tenants or other persons shall be a set off against and be deducted from the rent or other demand of the owner or owners for the use or profits of such premises, or in case there be not rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person shall have right to demand, receive and recover the same from the owner or owners with costs; *Provided* that nothing herein contained shall alter any contract made or to be made between a landlord and his tenant:—And full power and authority is hereby given to every collector after the first day of September next following the issuing of the duplicate and warrant to levy and make the rates required by such duplicate and warrant to be collected or any part thereof from the lands and tenements of the person or persons, from whom such rates according to such duplicate and warrant shall be required to be collected, in case such collector shall not be able to find goods or chattels of such person or persons sufficient to satisfy such rates and shall not be able to collect the same from the tenant or tenants or persons occupying and having the charge of lands or tenements according to the provision hereinbefore contained; and to this end, if there be timber or grass upon such lands, that can be sold to satisfy the rates, the collector shall sell so much of said timber or grass, as will be sufficient to satisfy the said rates with costs; giving notice of the sale by advertisements posted in at least five of the most public and convenient places in the county, two of which shall be in the hundred of said collector; and the purchaser shall have full right to take and carry away any timber or grass so sold and shall have privilege of ingress and egress for that purpose; but if there be not timber or grass on the premises sufficient to pay the rates, or a sale of such

48 Powers of  
Collectors  
[53]  
[Fees 100—  
101]

44 tenant lia-  
ble

45 his reme-  
dy

46 lands  
when liable

47 sale of  
timber & grass

48 sale of land  
[58--59]



- timber or grass cannot be effected, then the collector shall sell so much and such part of the lands or tenements, as shall be sufficient to satisfy the said rates with costs; giving at least fifteen days notice of such sale by advertisements posted in at least ten of the most public and convenient places of the county and also at least fifteen days written notice to the owner or owners, if residing in the county: and such sale of lands or tenements shall be returned to the Court of Common Pleas at the next term in the county, where the premises lie, after making such sale; and the said court may inquire into the circumstances of the said sale and shall either approve or set aside the same; if the court shall approve the sale, the collector shall make a deed to the purchaser or purchasers for the premises sold; and thereby all the estate and title of the person or persons, as whose property the premises shall be sold, shall pass; if the court shall set aside the sale, an order may be made, if deemed proper, for another sale, which shall be returned and approved or set aside in like manner, and so on till the rates shall be collected; and if it shall be made to appear to the said court, that a sale of part of the premises cannot be made, the said court may in their discretion order a sale of the entirety, making such order as to the surplus as may be deemed just; but no sale shall be approved, if the owner be ready at court to pay the rates and costs. And if the collector shall not be able to find goods or chattels, lands or tenements of any person or persons sufficient to satisfy the rates, which he shall according to his warrant and duplicate be required to collect from such person or persons, and such person or persons shall neglect or refuse to pay such rates in ten days after demand, it shall be lawful for the collector to take and imprison the body of every such person according to the form and effect of said warrant: and the power of a collector to execute his warrant by distress and sale of goods and chattels or by taking and imprisoning the body shall extend throughout the county in which the hundred, for which he shall be appointed, shall be situate; and the oath or affirmation of a collector shall be received and allowed as competent evidence in all cases to prove a demand by him of rates; and no demand shall be necessary from any person not having a regular known residence in the county; but non-residents may be proceeded against in the same manner, as if a demand had been duly made on the day of issuing the warrant: and no proceeding shall be had before any Justice of the Peace for the recovery of any rates or taxes, excepting in the cases of persons dying or removing from the county before payment: but a person, who shall be appointed a collector and to whom a duplicate and warrant shall be issued and delivered, or his executors or administrators shall have and may exercise all the authority and powers granted by this Act and proceed by all the means herein prescribed for the collecting, levying and making of the rates required according to such warrant and duplicate to be collected for the space of two years from the date of such warrant: but no delinquencies shall be allowed to any collector, except by the Levy Court and Court of Appeal, when sitting as a court of appeal in March next ensuing the date of his warrant, and at no other time whatever. *Provided*, that the owners of any lands, their heirs, executors
- 49 notice |
- 50 return of sale
- (59)
- 51 Owner may pay
- 52 imprison-ment
- 53 Collector's power extends over county
- 54 Oath of Collector—of demand
- 55 No demand as to non-residents
- 56 restriction of proceedings before Justices [Justices of the Peace 177]
- 57 How long warrant is in force:
- but delinquencies not allowable after— [Fees 102]

or administrators or any person on their behalf shall have liberty to redeem the lands sold as aforesaid within two years from the time of sale upon payment to the purchaser, his heirs or assigns of the amount paid by such purchaser with interest for the same at the rate of twenty per centum per annum; and no deed shall be given in pursuance of such sale until the time of redemption shall have expired.

58 Land sold, redeemable

59 when deed may be given

Sect. 9. The Levy Court and Court of Appeal in each county shall in the month of February in every year appoint a Collector for every hundred in their county, who shall hold his office for one year; and every collector shall before his appointment shall be deemed complete, give bond to the State of Delaware with two or more sufficient sureties being freeholders of the county to be approved by the said court in a penalty to be determined by said court and to be, as nearly as can be ascertained, double the amount which such collector will be required to collect, with condition thereunder written according to the following form, viz :

60 collectors appointed

61 bond [63-64-65]

*The condition of the above written obligation is such, that if the above bounden being the collector of hundred in county, shall faithfully and diligently collect all the rates and taxes which he shall according to the duplicate and warrant to be issued to him as such collector be required to collect, and all taxes whatever which shall be committed to him for collection, and shall pay the amount of all such rates and taxes, excepting only so far as allowances shall be made to him, by the Levy Court and Court of Appeal, for delinquencies, commissions or otherwise, to the officers authorized according to law to receive the same, in the manner and within the times prescribed by law or legally appointed by the Levy Court and Court of Appeal of said county for that purpose—and furthermore, if the said shall perform the duties of his office of collector as aforesaid in all things with fidelity,—then the above written obligation shall be void :*

62 condition

And to the said bond shall be subjoined a warrant of attorney to confess judgment thereupon; and every such bond and warrant of attorney and judgment thereupon confessed shall be joint and several. And if any person, who shall be appointed a collector, shall refuse or neglect to give bond with sureties as aforesaid within such time, as the said court shall limit for that purpose, in such case the appointment shall be absolutely void; and the said court shall appoint some other person collector for the hundred, who shall give bond with sureties as aforesaid, and in case of his refusal or neglect to give bond with sureties as aforesaid, another appointment shall be made; and so on until bond with sureties shall be given, as herein before required; and no warrant and duplicate for a hundred shall be issued nor shall any such warrant be dated, until a collector shall be appointed for such hundred and bond and security be given as aforesaid; and every collector and his sureties shall by and upon the issuing and delivery to him of the duplicate and warrant for his hundred become and be chargeable with, and responsible for, the whole amount of the rates, which according to such duplicate and warrant he shall be required to collect, and with all taxes that shall be committed to him for collection, subject only to allowances to be made by the Levy Court and

63 judgment bond

64 Warrant not dated till collector appointed and bond given

65 Liability of collector and sureties

66 Ex'r or  
Adm'r of col-  
lector

67 Remedy  
for sureties

68 collector  
appointed in  
vacancy

69 bond-how  
kept & pro-  
ceeded on

70 Collectors  
—when to  
pay  
(73)

Court of Appeal for delinquencies, commissions or otherwise; and the death of the collector shall not discharge from, nor in any manner impair, this responsibility; but upon the death of the collector, the power to collect all the rates not collected upon his duplicate and warrant at the time of his death shall devolve to his executors or administrators, who may execute the said warrant in the same manner and by the same proceedings and as fully, as the collector could have done: *Provided always*, that in case a collector shall die or remove from the county or be incapable of proceeding in the collection, and the sureties for such collector or their executors or administrators shall make application to the Levy Court and Court of Appeal for relief, the said court in their discretion may appoint some freeholder of the hundred collector in the place of him so deceased, removed or incapable and may compel the delivery of the duplicate and warrant to such collector or cause a new duplicate and warrant to be issued to him, after he shall have given bond with sureties as herein before provided; and such collector so appointed and his sureties shall be chargeable with all rates, which shall remain uncollected by the former collector, subject to allowances as aforesaid; but such appointment shall not discharge the sureties of the first collector from any part of their responsibility under their bond nor in any manner impair such responsibility; but all monies collected by the last collector shall be carried as a credit to the charge against the first collector: and a collector so appointed in place of one so dead, removed or incapable shall have all the powers of a collector; and the same shall devolve to his executors and administrators on his death, and all the principles and provisions, that apply to the collector originally appointed for the year, shall apply to him excepting that his office shall continue for the residue of the term of the collector originally appointed; and if a new warrant be issued to him, it with the duplicate shall bear the same date with the original warrant and duplicate for the year. And the bonds of collectors shall be filed and carefully kept in the office of the clerk of the Peace and shall be proceeded on at the instance of the County Treasurer, or the Treasurer of the Trustees of the Poor, or by order of the court aforesaid.

Sect. 10. It shall be the duty of every collector to pay to the County Treasurer of his county the amount required to be collected by him for the county tax, as follows; to wit, one-third part thereof on or before the first day of July, one third part thereof on or before the first day of October, and the residue thereof after deducting commissions and delinquencies on or before the first Tuesday of February, next after his appointment, and to pay to the Treasurer of the Trustees of the Poor of his county the amount required to be collected by him for the poor tax, as follows, to wit; one-third part thereof on or before the first day of July, one third part thereof on or before the first day of October, and the residue thereof, deducting delinquencies and commissions, on or before the tenth day of December, next ensuing his appointment, and to pay to the County Treasurer of his county the amount required to be collected by him for the road tax, as follows, to wit, one moiety thereof on or before the first day of June, and the residue thereof,

delinquencies and commissions being first deducted, on or before the first day of October, ensuing his appointment; but in Sussex county no part of the road tax shall be levied till the expiration of the time for discharging it by labour; and certificates duly granted for labor done in discharge of the road tax according to law shall be received by and from the collector on account of that tax: And the Levy Court and Court of Appeal may in their discretion order payment of all or any of the taxes aforesaid at an earlier day than those before appointed, and may order payment of the road tax or any part thereof to be made to an overseer or overseers of the roads particularly named; *Provided* that this clause shall not control or affect any provisions concerning the discharge of road taxes in Sussex county by work done or materials provided. And every collector shall upon paying a sum of money to the County Treasurer or Treasurer of the Poor or overseer of the roads take two receipts, which such officers are enjoined to give, and shall deposit one of said receipts with the clerk of the peace of his county within ten days from taking the same; and the clerk of the peace shall state an account of all such receipts with every collector and deliver the same as the Levy Court shall direct: and for every neglect or refusal to take, or to give, or to deliver to the clerk of the Peace such receipt, the collector, County Treasurer, or Treasurer of the poor shall respectively be liable to indictment and to pay a fine not exceeding ten dollars with costs. And every collector shall on the first Tuesday of March next ensuing the issuing and date of his warrant render to the Levy Court and Court of Appeal of his county a just and true account of all the rates, which he shall have been required according to his warrant and duplicate to collect and of all payments by him made; and the said court shall proceed to examine, adjust and settle such account, making all just allowances; and the adjustment and settlement by said court shall be final and conclusive: and the said court may require other accounts from the collectors, as may be deemed expedient.

(Roads, &c.  
85-94.98.101)

71 earlier  
payments

72 road tax

73 duplicate  
receipts

74 penalty,  
collector, cl'k  
of peace,  
treasurer of  
county and of  
poor  
75 Collector's  
account

Sect. 11. The Levy Court and Court of Appeal in each county shall, in February in every year, appoint some good and substantial freeholder of the county to be the County Treasurer, who shall hold his office for one year and shall before entering on the duties of his office give bond with two or more sufficient sureties to be approved by the said court to the State of Delaware in the penalty of ten thousand dollars, upon condition according to the following form, viz; *The condition of the above written obligation is such, that if the above named* , being County Treasurer for county, shall and do well and truly account for all and every the sum and sums of money which shall come to his hands as such Treasurer, and shall pay and apply the same according to law, and also shall pay any balance that shall remain in his hands, after deducting from the amount, with which he shall as such Treasurer be justly chargeable, all payments lawfully made by him and all allowances made to him by the Levy Court and Court of Appeal of county, to his successors in office, or otherwise as the said court shall order and appoint, and furthermore, if the said shall perform the

76 County  
treasurer ap-  
pointed

77 bond

78 condition

*duties of his office of County Treasurer as aforesaid in all things with fidelity; then the above written obligation shall be void:*

79 judgment  
bond

And to the said bond there shall be subjoined a warrant of attorney to confess judgment thereon; and the said bond and warrant and the judgment thereon entered shall be joint and several. And if any person being appointed County Treasurer shall neglect or refuse to give bond with sureties as aforesaid, within such time as the said court shall order, the appointment shall be absolutely void: and another person may be appointed by said court, who shall give bond with sureties as aforesaid, and so on until bond with sureties shall be given.

80 duty of  
County Treas-  
urer

Sect. 12. It shall be the duty of the County Treasurer to demand and receive from the collector of every hundred in his county the amount of the rates, which such collector according to his duplicate and warrant shall be required to collect for the county tax and the road tax, as the same shall according to this Act be payable, excepting only so much of the road tax as the Levy Court and Court of Appeal may order to be paid by the collectors or any of them to overseers of roads, and to keep just accounts with every collector, charging him with the respective amounts of the rates required to be collected by him for said taxes, separating and crediting him with all payments by him made on account of each of said taxes distinctly; and in Sussex County certificates for labor granted according to law shall be credited to the collector as to the road tax; and it shall also be the duty of the County Treasurer to receive all such other sum or sums of money as the Levy Court and Court of Appeal may cause to be raised or procured for the use of the county whether by loan or otherwise; and it shall further be the duty of the County Treasurer to punctually pay and apply the money, which he shall receive (whether from collectors for rates collected or by means of loans or otherwise) for the use of the county, after deducting his commissions, to discharging allowances or orders made by the Levy Court and Court of Appeal of his county, (an account of all which orders and allowances he shall keep) and to hold any balance in his hands over and above satisfying such orders and allowances subject to the order of said court, and to pay and apply the same as the said court shall appoint, and to keep a just and fair account of all his receipts and disbursements, to lay all the accounts belonging to his office before the said court or any committee thereof as the said court may direct, and in February in every year to render to a committee of three members of said court to be appointed to receive the same a full and just statement of all the accounts relating to the public in his hands; which accounts such committee or any two of them shall examine and settle; and the settlement shall be signed by the committee or a majority of them and the County Treasurer and reported to the said court in March following the appointment of such committee and filed among the papers of said court. The County Treasurer shall also annually

81 accounts

82 Settlement  
before Audit'r  
(Auditor of  
Accounts 9)

during the first week of the first term of the Court of Common Pleas in his county for the year, attend before the Auditor at the place of holding said court, on a day to be appointed by the Auditor for that purpose, whereof notice shall be given to such Treasurer by the Auditor, and lay before the Auditor a just statement

of all the accounts relating to the public in his hands, including therein in dollars and cents all sums of money by him received, from whom and the times when, and also all disbursements by him made, to whom, on what account, and the dates of all allowances for which credit is claimed, and exhibit all vouchers; and the Auditor shall adjust and settle the account and his settlement shall be final. And it shall be the further duty of the County Treasurer, his executors or administrators without delay to deliver to his successor all the books, accounts and papers belonging to his office entire and undefaced and to pay to such successor any balance in the hands of said Treasurer at the time of his decease or other expiration of his term of office.

83 to deliver books, &c. to successor

Sect. 13. The Levy Court and Court of Appeal in Kent and Sussex counties respectively shall in February every year appoint one or more Overseers of roads in every hundred, and shall in such appointment specify and assign to each overseer some certain limits or particular district of his hundred; but a bridge supported at the common expense of the county lying part in one hundred and part in another hundred may be assigned to an overseer in either of said hundreds, to whom shall appertain in such case the duty and authority of overseeing and keeping in repair such bridge; and the said court shall apportion the sum of the road tax to be paid to each overseer, observing herein the provisions of the law touching the expenses and charges of making and maintaining roads, bridges and causeways, and shall make an order for the payment to the overseer of the sum apportioned to him, and may direct this sum to be paid either by the collector or County Treasurer, and shall on or before the first Tuesday of March yearly cause to be issued to each overseer a warrant, under the hand and seal of office of the clerk of the peace, specifying the limits or district assigned to him, and the sum of the road tax apportioned to him; and the receipt of the overseer shall be a good voucher to the officer directed to pay him: and the clerk of the peace shall deliver to the County Treasurer and the respective collectors a copy of all such orders, as shall concern them respectively: but the said court may in case of necessity alter an apportionment, provided it can be done without prejudice to what shall have taken place; and also the said court in case of emergency may lay and require collection of an additional road tax: and the collectors shall be under the same obligations, and have and may exercise the same powers, as are herein provided in relation to the original tax, for collecting and levying such additional tax; and in Sussex county the said court shall prescribe the time within which such additional tax may be paid by work and labor or materials. And if any overseer of roads in any hundred in Kent or Sussex counties shall die, remove from the hundred, be unable to perform the duties of his office or refuse to serve, the Levy Court and Court of Appeal shall have power to appoint an overseer in his place, and the warrant issued to the first overseer or a new one shall be delivered to him. And every overseer of roads in the respective hundreds of Kent and Sussex counties shall render to the Levy Court and Court of Appeal in his county on the first Tuesday of February ensuing his appointment a just and true account of all

84 Overseer of roads appointed

85 their limits

86 sum for each [89]

[Roads, &c. 5, 10, 31, 34, 36, 37, 38, 94, 101]

87 Warrants

88 Clk of the Peace to deliver copy, &c.  
89 apportionment varied

90 additional road tax

91 Vacancy

92 acc't of overseers [94]

monies received by him and of all disbursements made by him, and the persons from and to whom and the dates, and the particular days of working and on what roads, and the number of workmen or laborers employed each day; and he shall exhibit all his vouchers; and the said court shall adjust and settle all such accounts, and their settlement shall be final and conclusive; but no overseer shall be allowed in such account for workmen, laborers, slaves, teams, workhorses, materials or other matters furnished from his own estate, excepting that in the county of Sussex an overseer may discharge his own road tax by labor in like manner, as others. And in Kent or Sussex county the offices of the commissioner of the Levy Court and Court of Appeal and of overseer of the roads shall not be held at the same time by the same person.

93 settlement  
94 not to furnish materials &c.  
95 Form of Accounts

Sect. 14. The Levy Court and Court of Appeal may prescribe the form in which the several accounts to be rendered to them shall be drawn, and the manner, in which the same shall be verified.

96 Penalty on Clerk of the Peace and Overseer of Roads—for default

Sect. 15. If any clerk of the peace shall refuse or neglect to perform any of the duties enjoined upon him by this Act, he shall for every such refusal or neglect forfeit and pay to the State a fine not less than twenty dollars nor more than fifty dollars; and if any person appointed an overseer of roads pursuant to this Act shall refuse to serve in that office, or shall refuse or neglect to perform the duties thereof, he shall, for every such refusal or neglect, forfeit and pay to the State a fine of twenty dollars: which fines shall be recovered by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery within the county, where the offence happens, with full costs of prosecution.

97 Constables attending Levy Court

Sect. 16. The Levy Court and Court of Appeal in each county shall have power to select and require two of the constables of the county to attend said court during its sittings as bailiffs of said court; and any constable so selected and required to attend said court shall for every neglect or refusal to attend the same and also for every neglect or refusal to obey the reasonable requirements of said court, unless excused by said court, forfeit and pay to the State a fine not exceeding ten dollars with costs of prosecution upon conviction on indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery within the county.

*Passed at Dover, February 4, 1825.*

### III.

#### 1786 AN ACT for the valuation of real and personal property within this State.

98 Assessment (101 103, 104 109, 110, 114)  
99 property exempt

Section 1. All real and personal property in this State not belonging to this State or to the United States or to any church, county, religious society or parish or to any college or to any county school or to any corporation for charitable uses shall be valued agreeably to the directions of this Act and shall be chargeable according to such valuation with the public assessment: *Provided always,* That provisions necessary for the use and consumption of the person, to whom the same shall belong, and his or her family for the year (not including live stock), plantation

utensils, the working tools of mechanics or manufacturers actually and constantly employed in their respective occupations, the implements of a person's trade or profession, stock on hand of a manufacturer or tradesman, household furniture other than plate, grain and other produce of land, wearing apparel, ready money, bonds and other securities for money, goods, wares and merchandises imported, such carriages of pleasure or travel as are already taxed by law, shall be and are hereby excepted from any rate or assessment: *And provided always*, That it shall and may be lawful for the assessors of the several hundreds respectively to estimate and value the stock on hand of a manufacturer or tradesman according to the real profits arising to the owner or possessor thereof, regarding the debts due from the person or persons respectively, from the best information that he can obtain.

100 Stock of manufacturer or tradesman

Sect. 4. The assessors in the several hundreds in each county respectively shall take an accurate account of the land in their respective hundreds and return the same in writing specifying therein the quantity of acres belonging to every person or persons, what part thereof is improved and what part is unimproved, with the buildings and improvements thereon: And the said assessors shall estimate each tract or parcel of land at its actual worth in ready money from the best information, they can obtain, regarding all circumstances and advantages of the same from situation or convenience to market; and the said assessors are authorized and required to call upon the owner or owners of the land in the several hundreds respectively in the county, in which the land lies, to discover and ascertain the quantity thereof, and also on the Recorder of deeds and surveyor of their respective counties, who is hereby required to give any information to the said assessors or any of them, which his records may afford.

101 Assessors return of value of land

102 how estimated and quantity found

Sect. 5. The said assessors shall ascertain and make a return of the lots and houses in the cities, boroughs, towns and villages within their hundreds respectively and by whom held, possessed or claimed, and the value thereof in ready money, and the rents of such houses and lots, and by whom paid; and they shall have power to call on the owner or possessor of such houses and lots to ascertain the quantity of land and the value thereof and to discover what rent is paid for the same, and shall assess the value thereof, as is herein before directed, upon the best information, they can get, and view of the premises, if necessary, and shall value the ground rent according to the rules herein after mentioned.

103 lots and houses in towns

Sect. 6. As a rule to ascertain the value of ground rent in the said cities, boroughs, towns and villages, the person or persons entitled to ground rent to the amount of eight pounds, shall be assessed as for one hundred pounds capital, and in the same proportion for any greater or less sum of ground rent: And the lessees or persons holding the ground shall be assessed on the actual worth of the improvements made since the lease or conveyance and the present value of the land, after deducting therefrom the value thereof at the time of the lease or conveyance, which value shall be estimated at one hundred pounds for every eight pounds of ground rent reserved, and so *pro rata* for every greater or less sum of ground rent; and the lessees or persons holding the ground shall be charge-

104 ground rents

105 tenements on ground rent

106 lessees to pay tax of lessor out of rent



- able and pay the sum rated to the lessors, and may deduct the same out of the rent, unless otherwise agreed between the person holding the ground and the person claiming the rent; but if the lessee or person holding the ground when the same was assessed, cannot be found, so that the sum rated to the person entitled to the ground rent cannot be collected from the person holding the ground, then the person entitled to the rent shall be entitled to pay the assessment on the same: And as a rule to ascertain the value of houses and lots in the said cities, boroughs, villages and towns, yielding an annual rent, the lessor or the person entitled to the house or lot shall be assessed for every twelve pounds of the rent reserved, as for one hundred pounds capital, and in the same proportion for any greater or less sum reserved; and upon leases for above three years and where the value of the ground, house or houses and improvements exceeds the value of the rent reserved, the lessees or persons holding the ground, house or houses and improvements shall be assessed upon the sum, which the actual worth of the ground, house or houses and improvements in ready money exceeds the value of the rent reserved, calculating twelve pounds at one hundred pounds capital as aforesaid; and the lessees or persons holding the ground, house or houses and improvements shall be chargeable with and may pay the sums rated to their lessor and may deduct the same out of the rent, unless otherwise agreed upon between lessor and lessee; but if the lessee or person holding and possessing the ground, house or houses and improvements or their effects or estate cannot be found, so that the sum rated to the lessor may be collected, then the lessor shall be chargeable with the same. And houses, lots and parcels of land in the same places shall be valued at their actual worth in ready money; but where lands have been leased or taken on ground rent, and the lessee or grantee has deserted the ground and left it to the lessor or grantor, and the lessor or grantor cannot obtain the rent agreed to be paid, in such case the ground shall be estimated at its real value and not upon a calculation from the rent reserved.
- 107 houses & lots in towns on rent
- 108 if at under rent, lessee assessed
- 109 When grantee on ground rent is insolvent, &c.
- 110 valuation of personal property
- 111 statement of particulars
- 112 return
- 113 Property owner unknown
- 114 Slaves (117.118.119)
- Sect. 7. Every assessor shall inform himself by all lawful ways and means of all personal property in his hundred (except as before excepted) and shall immediately on such information proceed to value such property agreeably to the directions of this Act, and shall form a statement in writing of the particulars of all personal property in his respective hundred and of his valuation thereof, in which shall be expressed the number of slaves of each description and the weight of plate and the value of each of the above species of property and all the other personal property and the value thereof, and the amount of the whole personal property of every person within his hundred, and the amount of the value of all personal property in the hundred, and shall return with his statement an alphabetical list of the names of all persons, whose property he shall value: and if any assessor cannot discover the owner of any property, real or personal, in his hundred, he shall value and mention the same in his return and note that the owner is unknown.
- Sect. 8. The following species of personal property shall be valued as follows, to wit: every male and female slave from eight

to fourteen years of age in any sum over ten pounds and not exceeding forty pounds, and every male slave from fourteen to forty-five years of age in any sum over twenty pounds and not exceeding seventy pounds, and every female slave over fourteen and not exceeding thirty-six years of age in any sum over fifteen pounds and not exceeding thirty-five pounds; male and female slaves under eight years of age and male slaves above the age of forty-five years and female slaves above the age of thirty-six years to a true proportioned value to male and female slaves above or under those ages, who shall be particularly noted; and if any slave should not be perfect in his limbs or sight or from the want of health or any visible infirmity shall be rendered incapable to perform his usual labour, the assessor shall make a reasonable abatement for such cause and shall note the same in his return: And silver plate shall be valued at eight shillings and fourpence *per* ounce; and other articles of personal property shall be left to the discretion and judgment of the several assessors, who shall estimate the same at its actual worth in ready money: *Provided, That* the said assessors shall be at liberty to estimate male slaves, who are tradesmen, at such value as they may judge them to be worth, regarding their respective trades and their proficiency therein.

115 Plate

116 Other articles

117 slaves being tradesmen

Sect. 9. Any person owning any slave or slaves or any person having the care and management of such slave or slaves shall deliver to the assessor of the hundred, in which he or she resides, when required by such assessor an account of all the slaves owned by him or her or under his or her care and management with the name and age of each; and such account shall be dated and signed by the person making the same; and the assessor shall view and examine each slave and diligently enquire into his age, and return the account of the owner or owners or person having the care and management of such slaves with his determination of the age and value of such slave: and if any owner or any person having the management of any slave shall refuse or omit to give in any slave to the assessor of the hundred, in which he resides, or wilfully lessen or increase his age, such owner or person having the management of such slave shall pay double the tax on the real value of such slave.

118 Owners or possessors of slaves to render an account of them (120)

119 Assessor to examine them

120 penalty—acc't not given, or false

Sect. 10. Every person, when required by the assessor of the hundred, in which his or her real and personal property or the real and person property under his or her care and management lies, shall give in to such assessor in writing dated and signed as aforesaid, if capable of writing, and if not, the same shall be shown to the assessor and by him inventoried, and the said inventory shall have the usual mark placed at the foot of the same by such person or persons, a full and particular account of all other his or her real and personal property in the same and of all real and personal property in his or her possession or under his or her care and management liable to assessment, and to whom the same belongs: and if any person shall refuse or after ten days notice by the said assessor in writing shall neglect to render such account or show his property as aforesaid, he shall forfeit the sum of three pounds to be recovered by action of debt, one moiety to him who will sue for the same, and the other moiety to and for the use of the State: And

121 statement duty of every one to give

122 if refusal or neglect

how it shall then be valued

123 penalty  
for giving a  
partial acc't

the assessor shall on his own knowledge or the best information he can obtain, value the real and personal property of such person to the utmost sum, he believes in his conscience the same may be worth in ready money and shall certify the sum so valued, and also the refusal or neglect; and shall double the assessment of such person; and the same shall be collected as the public assessment: And if any person shall give in a partial account of his or her real and personal property, under his or her care and management, or of the property in his or her possession, with intent that the payment of the assessment or rate on any property omitted may be avoided, such person shall forfeit the value of the property so omitted, if personal, and if real, forty dollars.

124 Persons  
removing pro-  
perty to  
escape taxa-  
tion, how pro-  
ceeded ag'tst

Sect. 13. If any person, who ought to be assessed by virtue of this Act for any personal property, shall by removing his or her effects from the county, where they ought to have been valued, or by any other fraud or device escape and not be taxed, and the same be proved before any Justice of the Peace of the county, where the person resides, at any time within one year next after his property ought to have been valued, every such person shall be charged in the county, where he or she is found, upon proof thereof, double the value of the sum he or she ought to have been rated at by this Act; and the same shall be collected from such person, as in other cases, in the county, where he or she shall be found; and if any person shall remove his or her property for the purpose aforesaid, and the same shall thereby or by any other fraud or device escape being assessed, such person shall forfeit thirty dollars.

125 Power to  
summon wit-  
nesses

Sect. 22. The said commissioners of the Levy Court and Court of Appeal shall have full power and authority to summon and compel the attendance of witnesses, who may by them or either of them be thought necessary to give information relative to their duty respectively.

126 Limitat'n  
of action—ev-  
idence on ge-  
neral issue,  
plaintiff fail-  
ing—treble  
costs to def't.

Sect. 30. If any suit shall be brought against any person or persons for any thing done in pursuance of this Act, the suit shall be commenced within six months after the fact committed; and the defendant or defendants in any suit may plead the general issue, and give this Act and the special matter in evidence, and that the same was done in pursuance and by the authority of this Act; and if it shall appear so to be done or if any suit shall be brought after the time limited, then the jury shall find for the defendant or defendants; and if the plaintiff shall become non suited or suffer a discontinuance, or if a verdict shall pass, or upon demurrer judgment shall be given, against him, the defendant or defendants shall recover treble costs and have a judgment and execution for the same.

*Passed, February 9, 1796.*

1797

AN ADDITIONAL SUPPLEMENT to the Act, entitled, *An Act for the valuation of real and personal property within this State.*

127 Of a per-  
sonal tax

Sect. 8. Every freeman above the age of twenty-one years shall be rated, in addition to his assessment, a personal tax for a capital not exceeding one thousand pounds nor less than fifty pounds, at the discretion of the assessors.

*Passed, January 19, 1797.*

IV.

AN ADDITIONAL SUPPLEMENT to an Act, entitled "*An Act for the valuation of real and personal property within this State.*"

1805

Section 1. As often as any owner or possessor of any real property or landed estate shall make it satisfactorily appear to the Levy Court and Court of Appeal of any county of this State, wherein such real property or landed estate may lie, that such real property or landed estate, for which such person is assessed, hath become less productive or profitable, than it was at the time of its assessment, from any accident or accidents, that have occurred since such assessment by means of any cause not in the power, diligence or foresight of such owner or possessor to have prevented or averted, the said Levy Court and Court of Appeal is hereby authorized, empowered and required to lower the rate of assessment of such real property or landed estate in proportion, as its value may from any of the causes aforesaid have diminished, since the same was assessed; or in case the said real estate shall by the causes aforesaid have become wholly unproductive, the said court is hereby empowered and required to take off from the assessment list any such rate or assessment of real property so made as aforesaid; any law, custom or usage of this State to the contrary in any wise notwithstanding.

128 Property reduced in value, without fault; —assessment reduced, or stricken off

Passed at Dover, January 25, 1805.

V.

AN ACT to authorize the Levy Court of Kent county to remove lunatic and insane persons from the public gaol of Kent county to the poor house.

1812

Whereas it hath been represented to this General Assembly that there are a number of lunatic and insane persons now confined in the public gaol of Kent county, some of whom have been confined for a number of years, and maintained by said county at a great expense; that a large and commodious house has lately been erected for the accommodation of the poor of said county, with sufficient apartments therein to accommodate persons of that description, where they can be maintained at a much less expense to the county.

Sect. 1. It shall and may be lawful for the commissioners of the Levy Court and Court of Appeal to issue their order or orders to any constable of said county of Kent, therein authorizing and commanding him to demand and receive from the sheriff of said county all such lunatics and insane persons, as are now confined or hereafter shall be confined in said gaol, who shall forthwith take such person or persons into his custody and immediately convey him, her or them to the poor house of said county and deliver him, her or them to the overseer or keeper of said house who is hereby authorized and required to receive and take every such person or persons under his care into said house for safe

129 Removing insane persons from gaol to Poor House (131)

keeping; and they shall from thenceforth be maintained and supported in the same manner as the other poor of said county are supported and maintained.

130 confinement

Sect. 2. It shall and may be lawful for the said overseer or keeper of said poor house under the direction of the Trustees of the Poor of said county to keep any such person or persons that may be committed to his charge as aforesaid in close confinement, if it be unsafe for him, her or them to have their liberty.

*Passed at Dover, February 11, 1812.*

1816

**A SUPPLEMENT** to an Act, entitled "*An Act to authorize the Levy Court of Kent county to remove lunatic and insane persons from the public gaol of Kent county to the Poor House.*"

131 extended to N. Castle & Sussex

Sect. 1. That the Act to which this is a supplement, be and the same is hereby extended to, and declared to be in full force and operation, in the counties of New-Castle and Sussex respectively; and the commissioners of the Levy Court and Court of Appeals, the constables, Trustees and overseers or keepers of the poor in the said counties respectively are hereby invested with the same powers and authorities, and are required and directed to execute the same in relation to all such lunatic and insane persons as now are or hereafter shall be confined in the gaols of the said counties of New-Castle and Sussex respectively, that are given by the said Act, to which this is a supplement, to the same officers in the county of Kent in relation to lunatic and insane persons confined in the gaol of the said county.

131 Duty of Trustees of Poor

Sect. 2. When it shall appear to the Trustees of the Poor in the counties of New-Castle, Kent or Sussex, that any lunatic or insane persons maintained and supported agreeably to this Act, or the Act to which this is a supplement, have or possess any real or personal estate, it shall be lawful for them, and they are hereby authorized and required to take all lawful ways and means to recover a reasonable compensation for the support and maintenance of such lunatic and insane person.

*Passed at Dover, January 17, 1815.*

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## LIEN OF JUDGMENTS & EXECUTIONS.

1429

**AN ACT** concerning the lien of judgments and executions.

1 Lien of judgments (Executors & Administrators 69)

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.*

2 on a verdict

Sect. 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.

3 amount to be ascertain'd

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 respectively 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.

4 several entered on same day

5 day not appearing

Sect. 3. A final judgment of the High Court of Errors and Appeals 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.

6 of High Ct. of Err. & Ap. (Constitution 87)

(Constitution 83)

7 Costs in H. C. of Err. & App. on affirmance

Sect. 4. 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,

8 Dates of Judgments

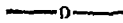
- in which the verdict is given,) shall set down upon the docket thereof the true date (*viz: the day, month and year*) of actually entering or signing it; it shall be sufficient, when such date is contained in the entry. Each clerk of the Supreme Court and prothonotary of the Court of Common Pleas, 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.
- 9 Indexes
- names enter'd within 24 hours
- Testa fi. fa. &c.
- to be carried into indexes
- 10 Penalty on cl'k or proth'y for neglect
- If any clerk or prothonotary shall refuse or neglect to perform any duty by this Act enjoined upon 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.
- 11 Lien of executions
- Sect. 5. 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 indorse thereon the date of the issue.
- Sheriff to note the date of receiving executions
- 12 Just. Peace judgments, &c. not within this Act
- This section and the first and second sections of this Act do not concern judgments or executions before Justices of the Peace.
- Sect. 6. Whenever judgment is confessed by virtue of a war-

rant 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 indorsed 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 officer shall enter or indorse 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.

13 Real Debt & interest entered indorsed on execution duty of Attorney entering judgment

& of clerk, &c

Passed at Dover, January 29, 1829.



## LIMITATION OF APPEALS.

### AN ACT of limitation of appeals in causes in equity.

1829

Section 1. 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 party from making any objection to such decree or order upon appeal from the final decree.

1 Limitation of Appeals from interlocutory decrees

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.

2 of Appeals from final decrees

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 indorsing thereon the date of said filing, and to enter the appeal with said date on the docket of said court.

3 saving as to infants, &c.

4 Time of filing noted

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 the register;

5 Mistake of Register



and any defect may be corrected according to the course or order of the High Court of Errors and Appeals.

6 original persons

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.

7 Appeals from C. C. P. in equity

Sect. 2. 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.

*Passed at Dover, January 23, 1829.*

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### LIMITATION OF ACTIONS AND ENTRIES, CONCERNING LANDS, &c.

1793

AN ADDITIONAL SUPPLEMENT to the Act, intituled *An Act for the limitation of actions, and proving accounts against the estates of persons dying within this government.*

Whereas peaceable possession of real estates for many years is a strong evidence of right; and the limitations of actions concerning them has a direct tendency to prevent expensive contests, to secure property, to give quiet to the minds of the people, to encourage improvements, and to promote the transfer of such estates according to their value; by which means the public prosperity is advanced.

1 Limitation

Section. 1. From henceforth no person or persons whatsoever shall make an entry into any lands, tenements or hereditaments, but within twenty years next after his, her or their right or title first descended or accrued; nor shall any person or persons whatsoever have or maintain any writ of right or any action, real, personal or mixed for, or make any prescription or claim to or in, any lands, tenements or hereditaments, of the seisin or possession of him, her or them, his, her or their ancestor or predecessor, and declare or allege in any manner whatever any further seisin of him, her or them, his, her or their ancestor or predecessor, but only an actual seisin or possession of him, her or them, his, her or their ancestor or predecessor, of the premises sued for or claimed, within twenty years next before such writ or action hereafter to be had or brought: *Provided nevertheless*, That any person or persons now having right or title of entry and the heirs of such person or persons may within ten years from this time proceed as might have been done heretofore: *And provided also*, That if any person having right or title of entry was and now is or if any person hereafter having right or title of entry shall be at the time of such right or title first descended or accrued an infant, *feme covert non compos mentis* or a prisoner; then, but in no other case whatever except as before provided, such person or the heirs of such

2 Saving for infants, married women, &c.

## LIMITATION OF ACTIONS AND ENTRIES.

397

person may within ten years next after the removal of such disability, but not afterwards, proceed, notwithstanding the said twenty years be expired, as might have been done before the same were expired; and if any such person shall die under any of the disabilities aforesaid, the heirs of such person shall have the like benefit, that such person might have had by living till the disability had ceased.

*Passed June 19, 1793.*

## LIMITATION OF PERSONAL ACTIONS.

*AN ACT for the limitation of certain personal actions and of exceptions to accounts.*

1829

Section 1. 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.

1 Sheriff's recog. & ex'ts or adm'r's bond

Sect. 2. 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.

2 Guardian bond

Sect. 3. 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, terretenants, 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 payable by instalments) is payable.

3 Surety in recog for appraised value of lands

Sect. 4. 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.

4 Bond of St. Treasurer, Secretary of State, County Treasurer, Treasurer of Poor, Collector, Constable, Register, &c

Sect. 5. 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 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.

5 Trespass, replevin, detinue, debt, account, assumpsit, case

6 Exception of Account current

7 & promissory note, &c.

8 Saving, as  
to infants, &c

Sect. 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.

9 penal  
statutes

Sect. 7. 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.

10 official  
bonds to  
banks & cor-  
porations

Sect. 8. 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 behavior 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.

11 duty of di-  
rectors, &c

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.

12 Defendant  
out of State—  
time deduc-  
ted

Sect. 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.

13 New ac-  
tion in certain  
cases

Sect. 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 defendant's 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.

14 Exceptions  
to accounts

Sect. 11. 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.

Sect. 12. 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 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.

15 Causes of  
Action, &c.  
heretofore ex-  
isting

*Passed at Dover, January 30, 1829.*

## MARINERS.

### AN ACT against trusting mariners.

15 Geo. II.

To the end that no ship or vessel may be detained from proceeding in the intended voyage by the arrest of any sailor or mariner shipped or belonging to any such ship or vessel in any port or harbor within this government;—

No tavernkeeper or innholder or other person within this government shall trust any sailor or mariner shipped or belonging to any ship or vessel in any port or harbor within this government above the sum of ten shillings, unless the master, commander or owner of such ship or vessel, to which such sailor or mariner belongs, give his or their orders or consent for the trusting such sailor or mariner. And no person trusting any sailor or mariner belonging to, or shipped as aforesaid, for any value above the sum of ten shillings without such order or consent as aforesaid, after tender to him or her made of the said sum of ten shillings and costs if any shall have arisen, shall stop or hinder such sailor or mariner from proceeding the intended voyage, for which he shall then be shipped; any law, custom or usage to the contrary notwithstanding.

Sum, above  
which mari-  
ner not to be  
trusted

## AN ACT regulating marriage.

(11-12-13)

Section 1. No man or woman shall intermarry within the degrees hereinafter named, that is to say :

1 Degrees prohibited

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.

2 White and colored persons  
3 How solemnized

Marriage shall be unlawful between a white person and a *negro or mulatto*.

Sect. 2. 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.

4 License (14)

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 bans 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 bans 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.

6 Consent of parents (17)

Sect. 3. 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.

7 of master

A marriage, if either of the parties be a servant, shall not be solemnized without the written consent of the master or mistress.

Penalties on marriage—  
8 servant without leave

If a servant contract marriage during his or her term of servitude 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.

9 free person with servant

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.

Sect. 4. 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. 10 Register of marriages

Sect. 5. 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. 11 Marriage void, 1-2) penalty  
12 on the parties  
13 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 bans 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. 14 Marriage contrary to section 2 (4-5) penalty

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 and pay to the State a fine not less than one hundred dollars nor exceeding five hundred dollars. 15 solemniz'd by person not authorized penalty

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. 16 assuming character of a preacher

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. 17 Marriage contrary to sect. 3 penalty

Sect. 6. The fee for solemnizing a marriage shall be one dollar and fifty cents. 18 Fee

*Passed at Dover, February 16, 1829.*

## I.

25 Geo. II.

## AN ACT for the regulation of toll.

Whereas the inhabitants of this government do greatly suffer, by reason of the exorbitant toll taken by millers within the same, for the grinding of grain: Therefore, for the better and more just regulation of the same for the future;—

1 Toll

Sect. 2. No person or persons keeping a mill or mills within this government shall after the publication of this Act presume on any pretence whatsoever to take more than the tenth part of each bushel of wheat, rye, indian corn, buckwheat or malt, as toll for grinding the same, within the county of New-Castle, or more than the tenth part, for grinding each bushel of wheat or malt, and the eighth part of indian corn, rye and buckwheat within the counties of Kent and Sussex; and if any miller or millers within this government shall take or cause to be taken any greater or larger toll, than is allowed by this Act, he or they so offending, being legally convicted thereof, shall be adjudged to pay double damages to the party injured with costs of prosecution, and shall be fined the sum of five pounds, one moiety whereof shall go to the Governor for the time being towards support of government, and the other moiety to the party grieved, to be recovered by bill, plaint, or information, wherein no essoin, protection or wager of law shall be allowed.

2 Penalty for unlawful toll

## II.

1785

## AN ACT for the regulation of certain water grist-mills in New-Castle county.

Whereas the Legislature of this State hath heretofore made provision for the encouragement of owners of mills within the same, and fixed a reasonable toll for grinding the several species of grain usually brought to those mills: And whereas great complaints have been made by some of the inhabitants of the said county of New-Castle, as well of the unreasonable delays of the owners and occupiers of the water grist-mills within the same county to grind grists of grain for their family-consumption as of the refusal of some owners and occupiers of mills to grind such grists; for the remedying of which complaints,—

2 Mills on  
Christiana  
creek, &c. to  
grind for fam-  
ily consump-  
tion, Monday  
& Saturday

Section 1. All owners, occupiers or possessors of water grist-mills on Christiana creek and on the creeks, whose waters empty into the same, within the county of New-Castle (the water grist-mills on Brandywine creek below the bridge on the public road leading from Wilmington to Chester excepted) shall, from and after the passing of this Act, appropriate the Monday and Saturday of every week to the grinding and manufacturing wheat and other grain into flour for the family-consumption of the inhabitants of said county, which may be brought to the said mills for that purpose; and if any owner, occupier or possessor of any such mill shall neglect or refuse to grind or manufacture wheat or other grain as aforesaid in such quantity, as he reasonably may, observing the rule of first come first served, and that in a good and artifi-

4 refusing

cial manner, on the Monday and Saturday of every week for the toll allowed by law, and shall be convicted thereof before any two Justices of the Peace for the said county upon the oath or affirmation of the party complaining or of any other credible witness or witnesses, such owner, occupier or possessor of a grist-mill shall forfeit and pay the sum of [twenty shillings (a)] for every such neglect or refusal [to be applied towards supporting the poor (b) of the hundred:] which shall be recovered with costs by distress and sale of the offender's goods and chattels by warrant under the hands and seals of the Justices before whom such conviction may be had.

penalty  
a £ 5 (8)  
b (8)

Sect. 2. And for regulating the water grist-mills on Brandywine creek below the bridge on the public road leading from Wilmington to Chester herein before excepted;—The Justices of the Peace of New-Castle county shall at the Court of General Quarter Sessions of the Peace to be holden in the present month of February and at the said court to be holden in every February thereafter fix and determine which day in every week for the year thence next ensuing the said mills shall appropriate to the grinding and manufacturing wheat and other grain into flour for the family-consumption of the inhabitants of the said county; beginning with the mills commonly called or known by the name of Shipley and Canby's and Marshall's, and then fixing the days of rotation so that two mills on every day on each week may be employed in that service; the days of grinding so as aforesaid fixed, the said court shall cause to be advertised at the door of every of the said mills and also at five of the most public places in Christiana and Brandywine hundreds in New-Castle county aforesaid forthwith after the sitting of the said courts; and if any of the owners, occupiers or possessors of any of the said mills, shall neglect or refuse to grind and manufacture wheat or other grain into flour for the purpose aforesaid, in a good and artificial manner, for the toll allowed by law, on such days in every week as by the Justices aforesaid shall be fixed for him to grind, and shall be convicted thereof in the manner herein before directed, he shall forfeit and pay the like sum of [twenty shillings] for every such neglect or refusal to be recovered with costs [and applied, as before it is prescribed.]

4 Mills on  
Brandywine  
regulated by  
Ct. of Quarter  
Sessions

Sect. 3. If it shall so happen that the Court of Quarter Sessions shall omit to fix and determine the days of rotation for the grinding and manufacturing of grain as aforesaid by the said mills below the bridge in the month of February in any year succeeding the present one, then and in such case the last rotation fixed by the said court shall continue as the rule for grinding and manufacturing grists for the inhabitants of the said county, until another shall be made under the directions of this Act.

5 Penalty for  
violation  
(8)

6 regulation  
omitted in a-  
ny year, that  
of preceding  
year continue

Sect 4. Each and every owner, occupier and possessor of any of the water grist-mills aforesaid shall have his mill-stones and bolting-chest in reasonable order and condition for the grinding and manufacturing the grists that may be brought to him on the days appointed or to be appointed under this Act, except in case of unavoidable accident, under the penalty herein before mentioned, which shall be recovered and applied in the manner before directed.

7 Penalty for  
Mills being  
out of order



1790

**A SUPPLEMENT to an Act, entitled *An Act for the regulation of certain water grist-mills in New-Castle county.***

Whereas it hath been found by experience, that the sum of twenty shillings prescribed by an Act, entitled *An Act for the regulation of certain water grist-mills in New-Castle county*, to which this is a supplement, as a forfeiture for every neglect or refusal to comply with the regulations therein mentioned, respecting certain water grist-mills in New-Castle county, is insufficient to compel the owners, occupiers or possessors of such mills, to comply therewith; and forasmuch as the same is a just, and if executed, would be a beneficial law:

8 Penalties in preceding Act increased and applied

Section 1. All and every owner, occupier or possessor of the said mills described in the Act, to which this is a supplement, and all and every part owner, occupier or possessor of the same, who shall neglect or refuse to comply with any or either of the rules or regulations in the manner therein directed, or with the determination and directions of the Court of General Quarter Sessions of the said county pursuant to the authority by the same recited Act vested in the said court, shall forfeit and pay, for every such neglect or refusal, the sum of five pounds, one moiety thereof to the informer, and the other moiety to be applied towards supporting the poor of the hundred in which the offence may be committed, to be recovered in like manner as the forfeiture of twenty shillings is directed to be recovered by the Act, to which this is a supplement.

Sect. 2. So much of the said recited Act as respects the forfeiture of twenty shillings, which is hereby altered, shall be and is hereby repealed, made null and void.

Passed January 27, 1790.

—o—  
**MILLS.**

**I.**

1773

**AN ACT for the encouragement of the owners of mills within this government, and for the repealing of an Act of Assembly, intituled *An Act to encourage the building of good mills in this government, and the supplement thereto, passed in the thirty-fourth year of his late Majesty's reign.***

1 Owner of Mill injured by mill dam or works of another—remedy

Section 1. If any owner or owners of a mill already built or hereafter to be built within this government shall conceive him, her or themselves to be injured or aggrieved by any mill-race, mill-dam or mill-pond hereafter to be made by any other person or persons, upon the petition of such owner or owners or guardians of minor owners to the County Court of Common Pleas, setting forth the same, the Justices of the said court shall issue a writ to the sheriff of the county, commanding him to summon a jury of twelve honest and lawful men to go with him and view the premises in the presence of the parties interested, if they will attend upon notice given them by the sheriff for that purpose, and to ap-

pear before the Justices of the next County Court of Common Pleas, when and where they shall upon their oaths or affirmations respectively after hearing the proofs and allegations of the parties by their verdict say and determine, whether any and what damages and loss, the person or persons so complaining has or have sustained by reason or means of the said race, dam or pond: And the Justices of the said court shall give judgment for or against the person or persons petitioning according to the said verdict with costs, and may issue an execution thereupon for the damages <sup>2</sup> damages and costs or for costs only, as the case may require, to be levied by the sheriff on the goods and chattels, lands and tenements of the person or persons, against whom the judgment shall be given as aforesaid. But if the said jury shall be of opinion, that the race, <sup>3</sup> or—abated dam or pond made as aforesaid is so injurious to any mill above or below it, that such race, dam or pond ought not to continue, they shall by their verdict say so; and thereupon the Justices of the said court shall adjudge and decree, that the erector or maker of any such dam or race shall pull down such dam or stop such race, as the case may require, so that the water may flow freely in the same course, that it might or could have done before the erecting or making such dam or race. And if the erector or maker of such <sup>4</sup> Powers of court dam or race will not comply with such judgment or decree, the said court may and are hereby required to enforce obedience to the same by imprisoning the person or persons so refusing or neglecting to comply therewith, and may and shall order the same dam to be prostrated or race to be stopped by the party or parties injured as aforesaid.

Sect. 2. *Provided always*, That the person or persons aggrieved in manner aforesaid do prefer their said petition within six years from the time of the injury or damage done to him, her or them as aforesaid and not after; *Saving* the rights of infants, *femes covert*, persons *non compos mentis*, imprisoned or out of this government, so as they exhibit their petition within one year after the impediments aforesaid are removed. <sup>5</sup> Limitation

*Passed November 6, 1773.*

## II.

### AN ACT for the preservation of mill property.

1819

Section 1. If any person or persons being the owner or possessor, owners or possessors of any mill within this State worked by a water power, shall at any time after the passing of this Act, wilfully and knowingly by any means discharge or cause to be discharged from any mill-dam an unusual quantity of water, or if by the accidental breaking or overflowing of any mill-dam an unusual quantity of water should be discharged; it shall be the duty of such person or persons owning, possessing or having the charge of, and residing at or near, the said mill, as soon as the nature of the case will admit to give notice of the wilful or accidental discharge of such water to the owner, possessor or keeper or to either of them, who may reside at or nearest to, any mill which may be sit- <sup>6</sup> Notice—when unusual discharge of water from mill-dam, by design or accident—to holders to Mills below

7 penalty for neglect  
 uated next below upon the same stream; and for omitting or neglecting to give such due and reasonable notice, the offender shall, on due proof thereof being made, forfeit and pay double the amount of all damages, with costs of suit, which may be sustained by the owner, possessor or keeper of any such lower mill as aforesaid, to be recovered as debts of a like amount are or may be recoverable by the laws of this State.

*Passed at Dover, 1 February, 1819.*

—o—

## NEGROES & MULATTOES.

### I.

1767

**A SUPPLEMENT** to *An Act for the further and better regulation of servants and slaves within this government.*

Whereas it is found by experience, that free negroes and mulattoes are idle and slothful, and often prove burthensome to the neighborhood wherein they live, and are of evil example to slaves :

1 Indemnity  
 to county  
 on freeing  
 slave  
 altered  
 (2. 43)

Sect. 2. If any master or mistress shall by will or otherwise discharge or set free any mulatto or negro slave or slaves, he or she or his or her executors or administrators at the next respective County Court of Quarter Sessions shall enter into a recognizance with sufficient sureties to be taken in the name of the Treasurer of the said county for the time being, in the sum of sixty pounds for each slave so set free, to indemnify the county from any charge they or any of them may be unto the same, in case of such negro or mulatto's being sick or otherwise rendered incapable to support him or herself; *and until such recognizance be given, no such negro or mulatto shall be deemed (a) free.*

a altered  
 (43)

*Passed October 31, 1767.*

1787

**AN ACT** to prevent the exportation of slaves, and for other purposes.

Sect. 3. *And whereas* some doubts have arose, whether a negro or mulatto slave heretofore manumitted by his master or mistress by writing, last will or otherwise, without having entered into the security to indemnify the county required by the several laws of this State, could be entitled to his or her freedom; to remove all such doubts;—where any master or mistress may have heretofore manumitted and set free any negro or mulatto slave that is now above the age of twenty-one years and who at the time of such manumission was not above the age of thirty-five years, and who was healthy and no ways decrepit or rendered incapable of getting his or her living, without having given the securities to indemnify the county required by the laws of this State, shall and is hereby declared to be absolutely free in as full and ample a manner to all intents and purposes, as if the security aforesaid required by the laws aforesaid had been given.

1 Manu-  
 missions  
 without in-  
 demnity—  
 good in cer-  
 tain cases

Sect. 4. *Provided*, That no manumission made by any master or mistress as aforesaid shall affect or prejudice his or her creditor or creditors, who are such at the time of manumission, where the master or mistress so manumitting hath not sufficient real or personal estate to satisfy the *bona fide* debts of such creditor or creditors.

No such manumission to affect creditors

Sect. 6. Any master or mistress after the passing of this Act may by any last will in writing or otherwise, manumit and set at liberty any negro or mulatto slave above the age of eighteen years and under the age of thirty-five years, who is healthy and no ways decrepit or rendered incapable of getting his or her living, without giving the security required by any of the laws of this State; any law, usage or custom to the contrary in any wise notwithstanding.

2 In what cases—Manumissions good without indemnity

Sect. 8. No slave manumitted agreeably to the laws of this State or made free in consequence of this Act or the issue of any such slave, shall be entitled to the privilege of voting at elections, or of being elected or appointed to any office of trust or profit, or to give evidence against any white (*a*) person, or to enjoy any other rights of a freeman, other than hold property, and to obtain redress in law and equity for any injury to his or her person or property.

3 Privileges of freed negroes & mulattoes and their issue a (4)

*Passed February 3, 1787.*

AN ACT to allow free black persons and free mulattoes in certain cases to give testimony in courts of justice.

1799

Whereas great injustice and many inconveniences have heretofore arisen from free black persons and free mulattoes not being allowed to give testimony in courts of justice :

In all criminal prosecutions, where it shall appear to the court, before whom the prosecutions are depending, that no white person or persons competent to give testimony was or were present at the time, when the fact charged is alleged to have been committed, or where such white persons, who were present, have since died, or are absent from the State and cannot be produced as witnesses, any free black person or free mulatto may be admitted in the same manner and under the same circumstances, that white persons may now be allowed to give testimony, any law, usage, or custom to the contrary notwithstanding, *Provided nevertheless*, That no free negro or free mulatto shall be admitted as a witness nor allowed to give testimony against any white man to charge such white man with being the father or reputed father of any bastard child.

4 Witnesses in certain cases

exception

*Passed at Dover, February 1, 1799.*

## II.

AN ACT concerning negro and Mulatto slaves.

1797

Whereas it is necessary for the security of negro and mulatto slaves, whose masters or mistresses may intend to manumit them, and also for the safety of persons holding such property, that the

mode of manumitting such slaves should be rendered certain, and not depend upon verbal contracts or manumissions, which are often misunderstood and forgotten ;

5 Slaves not  
set free by  
verbal con-  
tracts

Section 1. No negro or mulatto slave shall be set free and at liberty, nor discharged from the service of his or her master or mistress, or masters or mistresses by the adjudication or decree of any court whatsoever in virtue or in consequence of any verbal contract or agreement hereafter made by such master or mistress, or masters or mistresses ; but that every such contract and agreement shall be null and void and shall not be binding or obligatory upon such master or mistress, or masters or mistresses.

6 Manumission—  
requisites  
(9)

Sect. 2. All and every manumission of any negro or mulatto slave shall be in writing and signed and sealed by the master or mistress or masters or mistresses manumitting such slave and shall be attested and subscribed in the presence of such master or mistress or masters or mistresses by one or more competent and credible witnesses : or else such manumission shall be utterly void and of none effect.

7 acknow-  
ledged or pro-  
ved—and re-  
corded

Sect. 3. It shall and may be lawful for any master or mistress or masters or mistresses named in such manumission, which shall be signed, sealed, attested and subscribed as aforesaid, in his, her or their proper person or persons or by his, her or their attorney or attorneys for that purpose appointed to appear before the Supreme Court, or before the Court of Common Pleas, or before the Chancellor or any Judge or Justice of the Peace in the county, in which such master or mistress or masters or mistresses reside, at any time after the execution of such manumission, and acknowledge, that such manumission is the act or deed of such master or mistress, or masters or mistresses ; and in case such master or mistress or masters or mistresses be dead or cannot appear, it shall and may be lawful for any one or more of the witnesses, who attested and subscribed such manumission, to be brought before the Supreme Court, or Court of Common Pleas, or before the Chancellor, or any Judge or Justice of the Peace, which witness or witnesses shall be examined upon oath or affirmation to prove the execution and their attestation and subscription of the manumission then produced, whereupon the clerk or prothonotary of the said court under his hand and the seal of his office, or the said Chancellor, Judge or Justice of the Peace under his hand and seal shall certify such acknowledgment or proof upon the back of the manumission as aforesaid, within the year when the same was made, and by whom ; and every such manumission so acknowledged or proved shall be recorded in the office for recording of deeds, after the execution thereof ; and after the same shall be recorded, the recorder shall certify on the back thereof or at the foot thereof under his hand and seal of his office the day he recorded the same, and the name of the book and page wherein it is recorded.

8 No action  
on contract  
(9)

Sect. 4. No action shall be brought whereby to charge any person or persons upon any agreement or contract for the liberation or manumission of any negro or mulatto slave, unless such agreement or contract shall be in writing and signed and sealed by the party making the same, and shall be attested and subscribed by one or more competent and credible witnesses.

Sect. 5. *Provided*, That nothing in this Act shall prevent any master or mistress from manumitting any negro or mulatto slave by his or her last will. <sup>9 Will not affected</sup>

Sect. 6. The security required by the laws of this State to be given by any master or mistress on liberating or manumitting his or her slave shall be given according to the true intent and meaning of such laws; any thing herein contained to the contrary notwithstanding. <sup>10 Indemnity altered (43) (37)</sup>

Sect. 7. If any person or persons shall conceive him, her or themselves aggrieved by any discharge, adjudication, decree or sentence made, ordered, given, or rendered by the Judges of the Court of Common Pleas on the hearing of any petition for freedom preferred to them by any person held or detained as a servant or slave, it shall and may be lawful for such person or persons to appeal from the discharge, adjudication, decree or sentence of the said court to the High Court of Errors and Appeals. <sup>11 Appeal—petition for freedom (Servants and Slaves)</sup>

*Passed January 18, 1797.*

### III.

#### AN ACT concerning negroes and mulattoes.

1910

Section 1. *Be it enacted and declared, by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That where by any deed of manumission executed agreeably to the form prescribed by the Act entitled "An Act concerning negro and mulatto slaves or by any last will and testament, any negro or mulatto slave hath been or hereafter shall be declared to be free after serving a limited time, such negro or mulatto shall in the mean time, until the term for which he or she shall be held to service, be deemed and taken to be a slave, but nevertheless after the expiration of such term to be entitled to his or her freedom and to all the immunities and privileges which a free negro or free mulatto may or can enjoy by the laws of this State.

<sup>12 To be free at future day, in mean time Slaves (II.)</sup>

(3, 4)

Sect. 2. *And be it further enacted and declared,* That the children of any such female negro or mulatto born within the said term of service and the issue of such female children shall be in like manner deemed and taken to be slaves; the males until they severally arrive at the age of twenty-five years, and the females until they severally arrive at the age of twenty-one years; and after they shall have arrived at the respective ages aforesaid, they shall be free and be entitled to all the immunities and privileges of free negroes or free mulattoes.

<sup>13 issue of females, born during intermediate time</sup>

Sect. 3. *And be it further enacted and declared,* That any negro or mulatto manumitted as aforesaid, who hath heretofore been or hereafter shall be brought into this State from any other State, shall in like manner be deemed and taken to be a slave until the expiration of the term, for which he or she shall be held to service by the terms of such manumission; provided that the said negro or mulatto shall not be older than thirty-five years of age at the expiration of the said term.

<sup>14 To be free at future day, brought from other State—same principle</sup>

Sect. 4. *And be it further enacted and declared,* That the chil-

15 Issue of such females—born in intermediate time  
 dren of any such female negro or mulatto born within the said term of service and the issue of such female children shall be in like manner deemed and taken to be slaves; the males until they severally arrive at the age of twenty-five years, and the females until they severally arrive at the age of twenty-one years; and after they shall have arrived at the respective ages aforesaid, they shall be free and be entitled to all the immunities and privileges of free negroes or free mulattoes.

16 Satisfact'n by servitude for absence

Sect. 6. And for the prevention of such manumitted person or persons or their issue as aforesaid absenting themselves from their master's or mistress' service;—For such time, as any such slave as aforesaid shall absent him or herself from his or her master's or mistress' service without leave first obtained for the same, every such slave as aforesaid, for such absence and expenses of taking up, securing and other necessary charges, shall at the expiration of the time of his or her servitude make satisfaction by servitude according to the judgment of any court of law or equity within this State, before which such slaves as aforesaid shall be brought for that purpose.

17 Issue of females as aforesaid (13, 15) certified by Master to Recorder within 12 months after birth

Sect. 7. Every person being an inhabitant of this State, who shall be entitled to the services of any child hereafter born of any negro manumitted as aforesaid or of the issue of such manumitted negro as aforesaid, shall within twelve months after the birth of such child cause to be delivered to the Recorder of the county, whereof such person shall be an inhabitant, a certificate in writing containing the name, age and sex of the child so born; which certificate shall be by such Recorder entered in a book to be by him provided for that purpose; and such record or a certified copy thereof under the hand and seal of such Recorder shall be received in evidence in all courts of law or equity in this State and be deemed and taken as evidence of the age of such child: and such Recorder, by whom such certificate shall be recorded, shall have and receive from the person giving such certificate twenty-five cents for recording the same; and if any person shall neglect to deliver such certificate to said Recorder within the said twelve months such person shall forfeit and pay for every such offence the sum of five dollars, and the further sum of one dollar for every month, such person shall neglect to deliver the same, to be sued for and recovered by any person who will prosecute for the same, one moiety thereof to the use of such persons who will sue for the same, and the residue to the use of the poor of the county, where such person so neglecting shall reside, to be recovered before any Justice of the Peace in like manner, as debts under thirty-two dollars are recoverable.

18 Recorder's fees

19 Penalty for neglect

*Passed at Dover, February 1, 1810.*

#### IV.

1811 AN ACT to prohibit the emigration of free negroes or mulattoes into this State, and for other purposes.

20 Free negroes & mulattoes, from other States

Section 1. No free negro or free mulatto not now residing in this State shall hereafter come into this State to reside; and if any

free negro or free mulatto shall come into this State contrary to the directions of this Act, it shall be the duty of any Justice or conservator of the peace, who shall have knowledge or information thereof, to issue his warrant or precept to any constable of the county, commanding him to notify and warn the said negro or mulatto to depart this State; and if said negro or mulatto shall not depart or remove from this State within ten days after being warned and notified as aforesaid, he or she shall forfeit and pay the sum of ten dollars for each and every week he or she shall remain within this State after the expiration of the said ten days and notice as aforesaid, to be paid to such person or persons, as shall first give notice or information thereof to any Justice or conservator of the peace; and upon such information being given to any Justice or conservator of the peace, it shall be his duty forthwith to issue a warrant under his hand and seal directed to any constable of the county, who shall forthwith proceed to arrest the said free negro or free mulatto and bring him or her before the said Justice or conservator of the peace, who shall in case said negro or mulatto be unable to pay said fine with costs and give surety to be approved of by said Justice or conservator for his or her departure from this State within five days, commit the said free negro or free mulatto to the public gaol of the county; and said Justice or conservator shall specify in said warrant of commitment the amount of the fine imposed on such negro or mulatto together with costs and also the name of the person or persons, to whom such fine is payable; and it shall be the duty of the sheriff of the county, where such negro or mulatto shall be committed, forthwith to proceed to sell such negro or mulatto to any person or persons residing in this State for such term, as shall be sufficient for payment of said fine and costs together with the charges of imprisonment and sale; first giving ten days public notice of such sale by advertisements to be set up in the most public places in each hundred of the county where such sale shall be made.

21 warned to depart

22 refusal—proceedings & penalty

23 inability to pay—imprisonment

and sale

SECT. 2. If any free negro or free mulatto shall remain or continue to reside in this State for the space of ten days after the expiration of the time, for which he or she shall or may be sold as aforesaid, he or she shall be deemed and taken to be a non-resident and shall be proceeded against, and be liable to the same penalties and punishments, as herein before limited and appointed against free negroes and free mulattoes now residing out of this State.

24 remaining in this State after end of term penalty

SECT. 3. The return of the said constable to the warrant or precept aforesaid, certified or indorsed thereon, shall be admitted to be read as competent evidence against any such free negro or free mulatto of such notification or warning: *Provided always*, that said constable be sworn or affirmed by said Justice or conservator of the peace to the truth of said return so to be certified or indorsed as aforesaid, which oath or affirmation the said Justice or conservator of the peace is hereby empowered and directed to administer and to certify the same under his hand upon the said warrant or precept.

25 Evidence of notice to depart

SECT. 4. If any free negro or free mulatto residing in this State shall from and after the passing of this Act remove out of or depart therefrom and shall there remain or abide for the space of six

26 Out of State 6 months non-resident



months; then such free negro or free mulatto shall be deemed and taken to be a non-resident and shall be proceeded against and liable to the same penalties and punishment, as hereinbefore limited, directed and appointed against free negroes and free mulattoes now residing out of this State: *Provided* that nothing herein contained shall be construed to extend to any sea-faring person or persons of color, who may be following his or their occupation, or any wagoner or messenger while in the actual employment of any citizen or citizens of this State.

Proviso

27 Penalty  
for hiring, &c  
non-resident  
free negro, &c  
after due

notice

Sect. 5. If any person or persons residing in this State shall hereafter hire, employ or harbor any free negro or free mulatto, who shall emigrate or settle in this State after the passing of this Act, such person or persons shall for each and every such offence forfeit and pay the sum of five dollars for each and every day any such free negro or free mulatto may be so employed, hired or harbored, to be recovered by action of debt, bill, plaint or information in any court of record in this State with costs, one moiety thereof to be paid and applied to the use of the State and the other to such person or persons as shall sue for the same: *Provided always*, That nothing herein contained shall be construed, deemed or taken to extend to affect or make liable any person or persons, who may hire or employ such free negro or free mulatto, unless such person or persons shall have received notice from some Justice or conservator of the Peace of the county, that such free negro or free mulatto is not a resident of this State.

28 to be given  
in charge to  
Grand Jury

Sect. 6. It shall be the duty of the Court of General Quarter Sessions of the Peace to give this Act in charge to the grand jury at each and every court, that shall hereafter be held in the respective counties of this State.

29 exceptions

Sect. 7. Nothing contained in this Act shall be construed to extend or apply to the case of any negro or mulatto, who has at any time heretofore resided within this State but is now resident out of this State, and who returning to reside therein shall bring with him or her a certificate of fair conduct and character signed by at least one Justice of the Peace of the county, town or place, where such negro or mulatto has resided one year immediately preceding his or her coming into this State: *Provided* such certificate be approved of and indorsed by two Justices of the Peace of the county, into which the said negro or mulatto may come to reside, and the same be recorded in the office for recording of deeds of such county within one month next immediately after his or her coming for the purpose aforesaid into such county; nor shall this Act be in any way construed to apply to the case of a negro or mulatto returning to this State next immediately after his or her having been unlawfully taken out of the same.

*Passed at Dover, January 28, 1811.*

V.

AN ACT concerning free negroes, free mulattoes, servants and slaves. 1816

Sect. 3. If any person or persons shall after the passing of this Act apprehend or take up any runaway servant or slave, he or they shall forthwith carry him or her before the next Justice of the Peace of the county, where such servant or slave shall be so taken up or apprehended; and if on examination by said Justice of said servant or slave the said Justice shall find sufficient cause for his or her detention, he is hereby authorized and directed to commit to the public gaol of the county, in which said Justice may reside, by regular commitment directed to the sheriff of said county the said servant or slave so taken up and carried before him.

30 Runaway slaves & servants to be carried before Justice

& committed (36) Fugitives from labor—1—5)

Sect. 4. The said sheriff shall forthwith upon the reception by him of the commitment directed to him by the Justice of the Peace in conformity to the third section of this Act cause such servant or slave to be advertised in some public newspaper of the borough of Wilmington for the space of six weeks next after such servant's or slave's commitment; and if the master or owner of such servant so imprisoned as aforesaid, shall omit or neglect to release such servant or slave from prison within the time of six weeks next after the commitment to prison of such servant or slave, then and in such case the sheriff is hereby directed to discharge such servant or slave from his custody; nor shall such servant or slave be liable to any of the costs and charges of his apprehension, commitment or prison fees.

31 Advertised

& if not released by master discharged

exempt from costs

Sect. 5. The sheriff or gaoler shall not deliver to any person or persons whomsoever any such slave or servant without the authority of a Justice of the Peace residing in the town, in which the gaol in which the said servant or slave shall be confined is situate, or if there be none such or none present in such town, then of the nearest Justice of the Peace of the county given in writing under the hand and seal of such Justice, nor in such case except in the hours between the rising and setting of the sun; and such Justice of the Peace shall, before he grants such authority, require reasonable proof, that the person or persons applying for such slave or servant is or are *bona fide* entitled to such slave or servant, or the agent or agents, attorney or attorneys of the person or persons, who shall be proved before the said Justice to be *bona fide* entitled to such servant or slave; and the said Justice, as proof that any person or persons applying to him as agent or agents, attorney or attorneys are such, shall require a document in writing under the hand and seal or hands and seals of the principal or principals duly constituting such agent or agents, attorney or attorneys, and shall also require reasonable proofs, that such principal or principals are *bona fide* entitled to such slave or servant; and if any sheriff or gaoler shall without such authority deliver any servant or slave confined as aforesaid to any person or persons whomsoever, such sheriff or gaoler shall for such offence forfeit and pay the sum of five hundred dollars to be recovered by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery.

32 not delivered without authority of Justice

in writing, signed & sealed—nor in night

33 Proof

(36)

34 penalty

35 Penalty  
for employing  
harboring, &c  
another's  
slave or serv't

Sect. 7. No person or persons whatsoever shall knowingly employ, conceal or entertain another's servant or slave at his, her or their house or houses, plantation or plantations without the master's or owner's consent, except in distress of weather, sickness or other extraordinary occasions or accident, under the penalty of fifty dollars for every twenty-four hours he or she shall entertain any such servant or slave as aforesaid, so in proportion for any less time.

36 exceptions

Sect. 9. *Provided always*, That nothing in this Act contained shall be construed in any manner to affect any person or persons travelling with his, her or their servant or slave, or who shall move out of this State with his or her family, or who shall send or carry his or her servant or slave out of this State on his or her lawful business or service: *And provided also*, That nothing in this Act contained shall be taken or construed to affect any sheriff, gaoler or other person acting under the authority of a Judge or Justice of the Peace pursuant to an Act of Congress, entitled "An Act respecting fugitives from justice, and persons escaping from the service of their masters."

*Passed at Dover, 9 February, 1816.*

## VI.

1819

*AN ACT to provide for the indemnity of the counties of this State against the maintenance of slaves discharged by their masters and mistresses without giving the security required by law.*

Section 1. Whereas many masters and mistresses have attempted to manumit negro and mulatto slaves without giving the security required by law in such cases to indemnify the county from any charge, such county may be put to in case of such negro or mulatto being sick or otherwise rendered incapable to support him or herself; and such slaves have generally acted as free negroes or free mulattoes and have been dealt with and treated by most people as such and have enjoyed the privileges of free negroes or free mulattoes without any hindrance or interruption of their masters or mistresses or their executors or administrators: and whereas the instances of such kinds of manumissions are so numerous and have been of such long continuance, that it is necessary to make some provision by law to indemnify the counties as well as to effectuate the intentions of such masters and mistresses. and to secure to such negroes and mulattoes their freedom: *Be it therefore declared and enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met, and it is hereby declared and enacted by the authority of the same*, that all and every negro and mulatto slave, who at any time before the passing of this Act hath been discharged from the service of his or her master or mistress, his or her executors or administrators by any last will in writing, or by some duly executed manumission in writing, and whom it was the intention of such master or mistress to manumit and set free by such last will in writing or manumission in writing, and who hath not been reclaimed by such master or mistress, his or her executors or administrators, and who at the time of passing this Act is in the

37 Set free by  
deed or will,  
without in-  
demnity to  
county—free

actual enjoyment of immunity from laboring for or on account of, or for the benefit of, his or her master or mistress, his or her executors or administrators, shall be and is hereby declared to be free and at liberty, and shall and may enjoy all the benefits and advantages, that a free negro or free mulatto may or can do within this government, notwithstanding such master or mistress, his or her executors or administrators shall not have given the security required by the laws of this State to indemnify the county from any charge such county shall have been or may be put to in case of such negro or mulatto's being sick or otherwise rendered incapable to support him or herself.

Sect. 2. The master or mistress, his or her executors or administrators, of any such negro or mulatto slave, who at the time he or she was discharged from the service of his or her master or mistress, his or her executors or administrators was not above the age of thirty-five years, and who at the time of such discharge was healthy and no ways decrepit or incapable of getting his or her livelihood (except from infancy only,) shall not be liable nor chargeable for his or her maintenance or support; but such negro or mulatto shall in case of necessity be supported by the county in like manner, as other free negroes or free mulattoes are maintained and supported who are poor and incapable of getting their livelihood.

38 & in case of county charge—when Master not liable

Sect. 3. The master or mistress of any such negro or mulatto slave, who at the time he or she was discharged from the service of his or her master or mistress as aforesaid, was above the age of thirty-five years or was unhealthy or decrepit or incapable of getting his or her livelihood (except from infancy only,) shall be liable and chargeable for the maintenance and support of such negro or mulatto in case such negro or mulatto hath become or shall become unable to support or maintain him or herself; and the Trustees of the Poor of the proper county may maintain an action therefor against such master or mistress in any court of record in this State or before any judicial tribunal of competent jurisdiction: and as an additional remedy it shall and may be lawful for the Justices of the Court of General Quarter Sessions of the Peace and Gaol Delivery to make an order, from time to time, on the master or mistress for such sum or sums of money as will reimburse to the Trustees of the Poor of the proper county the expenses from time to time of the maintenance and support of such negro or mulatto: provided, that such suit shall not be maintained nor such order made against or on any other person or persons than such master or mistress.

39 When Master liable

40 Remedy

Sect. 4. The children of such female slaves as aforesaid, which shall have been born at any time since such female slave was discharged from the service of her master or mistress, his or her executors or administrators as aforesaid, shall be and are hereby declared to be free to all intents and purposes whatsoever and shall be liable to all the regulations and provisions of the Acts of the General Assembly in like manner, as the children of any free negro or free mulatto whatsoever in the State.

41 Issue of females so set free

Sect. 5. The Act of the General Assembly entitled "An Act to punish the practice of kidnapping free negroes and free mulattoes, and for other purposes," passed the fourteenth day of June seven-

42 Privileges, kidnapping—giving testimony

(4)

teen hundred and ninety-three, and the Act entitled "An Act, to allow free black persons and free mulattoes, in certain cases, to give testimony in courts of justice," passed the first day of February seventeen hundred and ninety-nine, shall from and after the passing of this Act be extended to and include all such negro and mulatto slaves as herein before are mentioned and herein before are declared to be free and at liberty, and to the children of all such female slaves as fully to all intents and purposes, as the same extend to, comprehend, include or relate to any free negro or free mulatto whatever.

43 Indemnity  
to county not  
requisite to  
freeing slave  
(1)

44 Liability  
of Master &  
remedy

45 restricted

Sect. 6. *And whereas* it is highly unjust that slaves, who are unhealthy or decrepit or incapable of getting their livelihood, should become burdensome to the country at the pleasure of their masters or mistresses under the pretence of setting them free, and it is equally unjust that such slaves after being discharged by their masters and mistresses should be again seized or claimed as slaves or liable to be so, and not be entitled to the privileges and protection of the law by reason of their masters or mistresses not giving security to indemnify the county;—it shall and may be lawful for all and every master and mistress of any negro or mulatto slave or slaves to manumit and set free and at liberty in manner and form, as is prescribed by the laws of this State, any negro or mulatto slaves or slaves without giving the security required by law to indemnify the county from any charge, such county may be put to in case of such slaves being sick or otherwise rendered incapable to support him or herself; and if any such negro or mulatto so manumitted and set free shall be under the age of ten years or above the age of thirty-five years at the time of such manumission or shall of any age be unhealthy or decrepit or blind or lame or maimed and incapable of getting his or her livelihood at the time of such manumission, then and in every such case the master or mistress, his or her heirs, executors, administrators or assigns shall be liable and chargeable for the maintenance and support of all and every such negro or mulatto at all times, that such negro or mulatto shall be incapable of getting his, her or their livelihood; and it shall and may be lawful for the Trustees of the Poor of the proper county to maintain an action for the maintenance and support of all and every such negro or mulatto against such master or mistress in any court of record in this State or before any judicial tribunal of competent jurisdiction: and as an additional remedy, it shall and may be lawful for the Justices of the Court of General Quarter Sessions of the Peace and Gaol Delivery to make an order, from time to time, on such master or mistress, his or her heirs, executors, administrators or assigns for such sum or sums of money as will reimburse to the Trustees of the Poor of the proper county the expenses from time to time of the maintenance and support of all and every such negro or mulatto; and the said Justices may make such order on such heirs, executors, administrators or assigns or on any of them, either separately or jointly, and in such shares and proportions as shall be agreeable to equity and good conscience: *Provided*, that if any such negro or mulatto shall be under the age of ten years at the time of such manumission and shall not be unhealthy nor decrepit nor blind nor lame nor maim-

ed, such master or mistress shall not be liable or chargeable for the maintenance and support of such negro or mulatto so under the age of ten years any longer, than until such negro or mulatto can be bound out agreeably to the provisions of the Act of the General Assembly entitled "An Act for the relief of the poor," passed the twenty-ninth day of January, seventeen hundred and ninety-one, or of an Act entitled "An Act enjoining certain duties on Justices of the Peace, Trustees of the Poor and constables," passed the fourth day of February, eighteen hundred and eleven.

Sect. 7. In all suits concerning, or brought by the Trustees of the Poor of any county for, the maintenance of any such negro or mulatto manumitted and set free as aforesaid, and in all applications or controversies, which be made for or which arise before the Justices of the Court of General Quarter Sessions of the Peace and Gaol Delivery, the burden of the proof of the age or ages of any such negro or mulatto slave or slaves discharged or manumitted, as herein before mentioned, shall be upon the master or mistress, his or her heirs, executors, administrators or assigns.

46 proof of age of negro, &c. on Master

*Passed at Dover, February 5, 1819.*

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## NUISANCES.

### AN ACT to prevent certain nuisances.

1829

Section 1. 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 the 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.

1 Penalty for exhibiting certain shows

Sect. 2. 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,

2 Penalty on owner of lands, &c. permitting such shows to be exhibited thereon

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 building 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.

*Passed at Dover, February 4, 1829.*

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## OATH & AFFIRMATION.

### I.

1776

**AN ACT** for the easing scrupulous consciences, in the mode of taking an oath.

Whereas there are some persons, who declare, they cannot take an oath by laying the right hand upon the book and kissing the same in the manner now used, for conscience sake, and yet are willing to take an oath in another mode and to serve their country in all cases, where an oath is by law necessary and are in every respect good subjects:—

1 Persons scrupulous of taking an oath in common form, to have it administered by holding up of right hand, &c.

Section 1. Every person, who shall be hereafter called upon as a witness or otherwise have occasion to take an oath and shall solemnly declare that he or she is conscientiously scrupulous of taking the same by laying the right hand upon the book and kissing it according to law, may and shall instead thereof take an oath in the form following, to wit; *He or she may and shall lift up the right hand and swear by the ever living God the searcher of all hearts, that, &c.* And at the end of the oath administered shall say, *As he or she shall answer to God at the Great Day*; which oath of such persons shall be accounted and deemed in the law to have the full effect of an oath in any case whatsoever in this government.

2 Swearing thus falsely, perjury, &c.

Sect. 2. All such persons, as shall be convicted of falsely and corruptly declaring and swearing in manner aforesaid any matter or thing, which, if the same had been upon oath in the present legal form, would by law amount to wilful and corrupt perjury, shall incur the same penalties, forfeitures and disabilities, as persons convicted of wilful perjury do incur by the laws of this government. And every person, who shall unlawfully and corruptly procure and suborn any witness to testify falsely and corruptly in any matter, cause or thing judicially to be determined according to the form prescribed by this Act, shall suffer the pains, forfeitures and disabilities, which are inflicted by the laws of this government upon persons guilty of subornation of perjury.

*Passed March 29, 1775.*

## II.

## AN ACT concerning the administering of certain oaths and affirmations.

1829

Section 1. 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.

3 Persons appointed by the courts to perform any duty, may swear each other

& also the surveyor and witnesses

Every surveyor shall have authority to administer the proper oath or affirmation to chain carriers acting under him.

4 surveyor may swear chain carriers  
5 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.

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.

6 Chancellor, &c may administer oaths

*Passed at Dover, January 20, 1829.*

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## OFFICES INCOMPATIBLE.

## AN ACT rendering assessors and collectors incapable of certain other offices.

1829

(Constitution 53)

Section 1. 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.

Assessor and Collector incapable of certain offices

*Passed at Dover, January 23, 1829.*

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## ORPHANS COURT.

## AN ACT concerning the Orphans Court.

1829

Section 1. There shall be yearly in each county, two terms of 1 Terms



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.

## 2 Process

The said court shall have authority to arrest and imprison the body, and to sequester goods and chattels, rights and credits, lands and tenements. It may issue process of citation, subpoena, attachment for contempt and sequestration.

3 Citation,  
subpoena

Process of citation, subpoena 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 subpoena shall be issued on application to the clerk. The court may appoint return days of process

## 4 return days

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.

5 Sequestra-  
tion

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.

## 6 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.

9 Issues for  
Jury

The said court shall have authority to direct issues of fact to be tried by a jury at the bar of another court.

8 Testimony  
written

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.

9 Duty of  
Clerk, of re-  
cording

Sect. 2. 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 separate 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, inter-

## 10 Index

11 Recogni-  
zances12 Papers not  
to be recorded  
without order

rogatories or depositions, citations or other process shall not be recorded without special order; a note of the issuing, filing or other act shall, unless there be other directions, 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.

13 inspection of court

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.

14 Penalty on clerk for neglect,

Sect. 3. 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 to his appointment, and to pay and deliver the same as the said court shall order and to well and faithfully execute the trusts and duties of his office of receiver.

15 counter-security—by Ex'r, Adm'r or Guardian

16 removal of Ex'r, &c. and receiver appointed

17 bond

Sect. 4. 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 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.

18 Money loaned under direction of court

Sect. 5. No appeal from any decree or order of the Orphans

19 Limitation of appeal

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.

20 Appeal no stay without security

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.

21 Guardians appointed

Sect. 6. 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 superseded. The said court shall have authority to remove a guardian for sufficient cause.

22 removed

23 Testamentary guardian

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.

24 Minor choosing

25 Power of court in special cases

26 Guardian bond

Sect. 7. 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 :

(27) *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 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.*

27 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.

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.

28 Bond—before entry of appointment

bond preserved

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.

29 Further security

Sect. 8. 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 tenantable condition of the premises, and the 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.

30 Valuation of ward's lands

31 Neglect to execute—contempt of court

Sect. 9. 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 guardianship 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 enforce 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 authori-

32 Accounts of Guardian

33 Cl'k of O. Ct. to certify to Reg'r appointment, &c.

34 duty of Register

ty to order guardians to render accounts and to enforce obedience to such orders by attachment for contempt and imprisonment.

35 Maintenance & education of ward when may exceed income

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; but without such direction the guardian shall not be allowed in any case for the maintenance and education of the ward more than the clear income of his estate.

36 Powers of Guardian

Sect. 10. 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 demurrer or proceedings be deferred, because of the infancy of a party, plaintiff or defendant.

37 Sue & defend

38 No parol demurrer

39 Order for delivery to ward of his property

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 his 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.

40 Guardian not to dispute ward's right

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.

41 No Guardian, unless by appointment except

Sect. 11. 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.

42 Court may appoint a person to take charge of a minor's property

Sect. 12. 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 in to court and shall be directed to be deposited in some bank or otherwise disposed of for the minor's benefit.

43 Rent in such case to be paid into court

*Passed at Dover, February 10, 1829.*

# PENALTIES FOR INJURIES TO CERTAIN WORKS.

425

## I.

AN ACT to incorporate the owners and possessors of a certain tract of meadow, marsh and cripple known by the name of White-clay creek and Red-clay marshes in the county of New-Castle. 1819  
1 White Clay & Red Clay Creek Marshes—N. Castle county

Section 15. If any person shall wickedly or maliciously break down or damage any of the said banks, dams, sluices or flood-gates, or let in the water of any creek, so as to injure the owners or possessors aforesaid, and shall thereof be convicted before the Justices of the Court of General Quarter Sessions of the Peace for the said county of New-Castle, the person so offending shall forfeit and pay treble the amount of the damages assessed by two or more disinterested persons, to be appointed by the said court to value the same; which fine and all other forfeitures arising under this Act shall be added to the common stock of the said company.

Passed at Dover, 5 February, 1819.

## II.

AN ACT in addition to the supplement to the Act entitled "An Act to authorize and empower the owners and possessors of the marsh, cripple and low grounds, lying on Muddy branch, in Little creek Hundred, in Kent county, to ditch, drain and bank the same." 1822  
2 Muddy Branch and Simons Creek Marshes—Kent county

Section 18. If any person or persons shall destroy, break or in any manner injure any of the dams, banks, trunks or sluices, which may be made and constructed in pursuance of this Act, or any part thereof, every such destroying, breaking or injuring of the said dams, banks, trunks or sluices or either or any part of the same shall be an indictable offence; and every person so destroying, breaking or injuring any the said dams, banks, trunks or sluices or any part thereof, or aiding, abetting or counselling therein or thereto, shall be liable to be proceeded against in the Court of General Quarter Sessions of the Peace and Gaol Delivery in Kent county aforesaid by indictment, and on conviction shall be fined in any sum not exceeding two thousand dollars at the discretion of said court and shall be sentenced to pay the said fine with all costs, and such proceedings shall be had as in all other cases of indictable offences; and one half of the said fine shall be paid to the treasurer of the said company, for the time being, for the use of said company. penalty

Passed at Dover, January 25, 1822.

## III.

1822  
3 Black Bird  
Creek Marsh-  
es—N. Castle  
county

AN ACT to enable the owners and possessors of the marsh, cripple and low grounds, lying upon Black-bird creek in New-Castle county, to bank and drain the same.

Section 19. If any person or persons shall destroy, break or in any manner injure any of the dams, banks, trunks or sluices, which may be made and constructed in pursuance of this Act or any part thereof, or shall hinder, molest or disturb the managers aforesaid or their workmen and laborers or any of them while employed in making or constructing the aforesaid dam, banks, trunks or sluices or any part thereof, or shall counsel, aid or abet the destroying, breaking or injuring of said dam, banks, trunks or sluices or any part thereof, or shall wilfully fill up or obstruct any of the canals or drains, which shall be cut in pursuance of this Act, or any part thereof, such person shall be liable to indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery within New-Castle county; and every such person so offending shall, upon conviction of such offence upon such indictment, be fined for every such offence in any sum not exceeding two thousand dollars at the discretion of said court; one half of which said fine shall be paid to the treasurer of said company, for the time being for the use of the company, and the other half of the fines to clearing out the scow navigation.

Passed at Dover, February 1822.

1824

A SUPPLEMENT to the Act, entitled "an Act to enable the owners and possessors of the marsh, cripple and low grounds, lying upon Black-bird creek in New-Castle county, to bank and drain the same.

Section 3. Every provision, section or part of the Act, to which this is a supplement, inflicting any penalty, fine or punishment whatsoever for cutting or destroying any bank, dam or obstruction now being or hereafter to be made or erected across or in the said creek, be and the same is hereby repealed, made null and void.

Passed at Dover, January 27, 1824.

## IV.

1823  
4 Marsh of  
Jos. Maul on  
Slaughter  
Creek—Sus-  
sex

AN ACT to authorize Joseph Maul, the owner and possessor of marsh and low grounds lying upon Slaughter creek, in Sussex county, to embank and drain the same.

Section 5. If any person or persons shall destroy, break or in any manner injure any of the dams, banks, trunks or sluices, which may be made and constructed in pursuance of this Act or any part thereof, every such person destroying, breaking or injuring said dams, banks, trunks or sluices or either or any of them, shall be deemed guilty of an indictable offence; and every person

or persons so destroying, breaking or injuring any the said dams, banks, trunks or sluices or any part thereof, or aiding, abetting or counselling therein or thereto, shall be liable to be proceeded against in the Court of General Quarter Session of the Peace and Gaol Delivery in Sussex county by indictment, and on conviction shall be fined in any sum not exceeding one thousand dollars at the discretion of said court and shall be sentenced to pay the said fine with all costs, and such proceedings shall be had, as in all other cases of indictable offences.

*Passed at Dover, January 30, 1823.*

V.

AN ACT providing for the draining of certain marshes and low grounds in Slaughter neck.

1823  
5 Slaughter  
Neck Marshes  
Sussex

[Section 1. "For the purpose of draining the marshes and low grounds in Cedar creek Hundred, Sussex county, in the lower part of Slaughter neck," authorizes the cutting of such ditches to empty into Slaughter creek as should be laid out as in said Act directed.

[Section 3 gives to the company the name of "The Slaughter Neck Marsh Company."]

Sect. 11. If any person shall wilfully fill up or in any manner obstruct any ditch or ditches, to be cut as aforesaid, every such person shall pay to the aforesaid company treble damages, to be recovered before any Justice of the Peace of Sussex county, if not exceeding in the whole fifty dollars, as debts above forty shillings and not exceeding fifty dollars are recoverable, and if above that sum, in the Supreme Court or Court of Common Pleas.

Sect. 12. 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.

*Passed at Dover, February 1, 1823.*

VI.

AN ACT to authorize and empower the owners and possessors of the marsh, cripple and low grounds lying on Little creek in Kent county, to ditch, drain and bank the same.

1823  
6 Little Creek  
Marsh Kent  
county

Section 9. After the said ditches, drains and bank shall be made and completed, the said managers are hereby authorized and empowered to keep the same in good order and repair; and if any person or persons whosoever shall stop up or obstruct the said ditches or drain or either or any of them, or shall injure or break the said bank, or injure the said sluice or sluices, to be created, erected or made in pursuance of this Act, he, she or they so doing shall forfeit and pay to the treasurer aforesaid, double damages for the injury so done, to be recovered by the said treasurer, in the Court of Common Pleas or Supreme Court of this State, and to be applied towards keeping the said ditches, drain, bank and sluice or sluices in good order and repair as aforesaid.

*Passed at Dover, February 5, 1823.*



## VII.

1824  
7 Tappahan-  
nah Marsh—  
Kent county

**A FURTHER ADDITIONAL SUPPLEMENT** to the Act entitled "*An act to authorize the owners and possessors of the marsh and low grounds, commonly called and known by the name of the Tappahannah marsh, situate in the forest of Murderkill Hundred, in Kent county, to cut a ditch or drain through the same.*"

[Section 1 gives to the company the name of the "Tappahannah Marsh Company."]

Sec. 9. If any person shall wilfully fill up or in any manner obstruct the ditches aforesaid or any of them, every such person shall pay to the said company treble the amount of the damages so done, to be recovered before any Justice of the Peace in Kent county, if not exceeding in the whole fifty dollars, as debts above forty shillings and not exceeding fifty dollars are recoverable; and if exceeding that sum, in the Supreme Court or Court of Common Pleas.

Sec. 10. Suits may be instituted and prosecuted in the name of the said Tappahannah Marsh Company, upon any bond given to the said company, or for the recovery of damages as aforesaid.

*Passed at Dover January 29, 1824.*

## VIII.

1826  
8 Broadkiln  
Creek—Canal  
Sussex coun-  
ty

**AN ACT** to improve the navigation of Broadkiln creek, by cutting and making a canal between Cedar Landing and the drawbridge over said creek.

Sec. 7. If any person or persons shall designedly fill up or obstruct the said canal 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 Sussex county.

*Passed at Dover, January 27, 1826.*

## IX.

1826  
9 Cow Marsh  
Kent county

**AN ADDITIONAL SUPPLEMENT**, to An Act, entitled "*An Act to authorize the owners and possessors of the marsh and low ground commonly called and known by the name of the Cow marsh, situate in the forest of Murderkill Hundred in Kent county, to cut a ditch or drain through the same.*"

Sec. 10. If any person shall wilfully fill up or in any manner obstruct the ditches aforesaid or any of them, or shall stop, obstruct or impede the course of the water or waters from running down the said ditches or drains, every such obstructing or filling up the said ditches shall be an indictable offence; and every person so obstructing or filling up any such ditch or ditches shall be liable to

be proceeded against in the Court of Quarter Sessions of the Peace and Gaol Delivery in Kent county aforesaid by indictment, and on conviction shall be fined in any sum not exceeding sixty dollars at the discretion of the court and shall be sentenced to pay the said fine with all costs of prosecution, and such proceedings shall be had as in all other cases of indictable offences, and one half of the said fine shall be paid to the treasurer of the said Cow Marsh company for the time being, and the other moiety thereof shall go to and be for the use of the State.

*Passed at Dover, January 27, 1826.*

### X.

**A SUPPLEMENT** to the act entitled "*An act to authorize the cutting of a canal from Back bay or Muddy creek, in the county of Sussex, to the Delaware bay at a place called the Mud banks.*"

1826  
10 Back Bay  
to Muddy  
Creek Canal-  
Sussex coun-  
ty

[Section 2 gives to the company the name of "The Prime Hook and Broadkiln Marsh Company."]

Section 10. If any person shall wilfully fill up or obstruct the aforesaid canal when cut and made, or any ditch or ditches to be cut and opened as aforesaid, every such person shall pay to the aforesaid company treble damages, to be recovered before any Justice of the Peace of Sussex county, if not exceeding in the whole fifty dollars, as debts above forty shillings and not exceeding fifty dollars are recoverable, and if above that sum, in the Supreme Court or Court of Common Pleas.

Sec. 11. 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.

*Passed at Dover, January 28, 1826.*

### XI.

**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 New-Castle county to make and keep the banks, dams and sluices in repair, and to raise a fund to defray the yearly expenses accruing thereon.*"

1827  
11 Marsh on  
St. Augustine  
Creek & Sil-  
ver Run—N.  
Castle county

Sec. 15. 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 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.

*Passed at Dover, February 6, 1827.*

## XII.

1827  
12 Baucum-  
brig Marsh—  
Kent county

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

[Section 2 gives to the company the name of "The Baucum-brig marsh company."]

Sec. 6. 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.

*Passed at Dover, February 8, 1827.*

## XIII.

1829  
(Chesapeake  
& Delaware  
Canal,) page  
85

**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.*"

13 Rules for  
the protection  
of the Canal,  
&c.

Section 1. 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.

14 Penalty  
for injuries

Sect. 2. 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.*

A SUPPLEMENT to the Act entitled "*An Act to incorporate a number of the physicians of the Delaware State, and for other purposes therein mentioned.*" 1822

Section 1. "The President and Fellows of the Medical Society of Delaware" at their annual stated meeting to be held in pursuance of the Act, to which this is a supplement, shall have full power and authority by a majority of those assembled to appoint a medical board of examiners for the State of Delaware. The said board shall be composed of so many members as the said society shall from time to time determine; the said members shall be elected by ballot and by a majority of the Fellows of said Medical Society assembled at such annual stated meeting; in case of an equal division of votes the officer in the chair at the time shall have the casting vote; the said members shall continue in office until the annual stated meeting of the said President and Fellows of said Medical Society next ensuing their election, and afterward until successors to them respectively shall be duly elected.

1 Board of Examiners

Sect. 2. The said medical board of examiners shall appoint a president and secretary of the said board, and shall have power to grant licenses to be signed by the president and countersigned by the secretary for the practice of medicine and surgery in this State; and they are required to grant such license to any person applying therefor, who shall produce a diploma from a respectable medical college or shall upon full and impartial examination be found qualified for the practice of medicine and surgery.

2 Licenses for practice of medicine or surgery

Sect. 3. "The President and Fellows of the Medical Society of Delaware" shall have power by a majority of those assembled at an annual stated meeting or at any occasional meeting legally held to appoint the time or times and place or places of meeting of the said medical board of examiners, and to determine the number of members necessary to constitute a board for the transaction of business; and to make and ordain rules and ordinances for the government of the said medical board of examiners: *Provided* the same be not repugnant to the laws and constitution of this State or of the United States: *And provided also*, That a majority of a board of examiners duly constituted shall have power to grant licenses.

3 Powers of medical society in relation to board of examiners

Sect. 4. For each license to be granted by the said board, the person obtaining the same shall pay to the secretary the sum of ten dollars to be by him paid to the treasurer of the said Medical Society.

4 Fees for licenses

Sect. 5. Any three members of the said board of examiners may give to a person soliciting permission to commence the practice of medicine and surgery in this State, a certificate containing such permission to continue in force until the next regular meeting of said board and no longer; *Provided*, That such three members shall by examination of the person soliciting permission or by diploma from a respectable medical college be satisfied with his qualifications; and a second certificate shall not be granted to the same person.

5 Certificates of permission to commence practice

Sect. 6. No person, who is not at the time of passing this Act a practitioner of medicine and surgery in this State or who is not residing in and regularly admitted to practice medicine and surgery

6 Practice without license, &c. unlawful

ry in some other State shall hereafter practice medicine or surgery and receive or demand any fee or reward therefor, in this State, without having first obtained from the aforesaid medical board of examiners a licence for that purpose, or without having at the time of such practice permission by certificate given as aforesaid and then in force; and every person, who shall offend against this section and shall thereof be convicted upon indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery within the county where such offence or offences shall be committed, shall for every such offence be fined in a sum not less than fifty dollars nor more than one thousand dollars according to the discretion of the court, and be adjudged to pay the costs of prosecution.

Penalty

7 Certain members of medical socy

Sect. 7. All the physicians named (a) in the first section of the Act of the General Assembly of this State, entitled "An Act to regulate the practice of medicine and surgery in this State," passed at Dover, 29 January, 1819, who are now living and not members of the society aforesaid, shall immediately upon the acceptance of this Act by "The President and Fellows of the Medical Society of Delaware" become and be in virtue of such acceptance members of the said corporation and be vested with all the rights, immunities and privileges of such members to all intents and purposes whatsoever.

8 Acceptance of this Act (10)

Section 8. If "The President and Fellows of the Medical Society of Delaware" shall at their next annual stated meeting or some other regular meeting by a majority of those assembled accept the seven foregoing sections of this Act as part of their charter of incorporation and shall signify such (b) acceptance to the Governor by writing under the hands of their president and secretary within three months thereafter, to be by the Governor communicated to the General Assembly, then the said seven sections of this Act shall become and be a part of the charter of incorporation of the said President and Fellows of the Medical Society of Delaware as fully and effectually to all intents and purposes, as if the same had been contained in the Act, to which this is a supplement.

9 Copy of original Act

Sect. 9. The copy of the Act, to which this is a supplement, contained in the book of the records of the said President and Fellows of the Medical Society of Delaware shall be competent and sufficient evidence of the said Act for all purposes; and the Secretary of the said Medical Society is required to make a true exemplification of the said copy of said Act contained in the said book of records, and to produce the said book to the Secretary of State, who shall collate said exemplification therewith; and the said exemplification being certified by the Secretary of State shall be filed with the roll of this Act and shall be evidence in like manner, as an original roll: and the same shall be published in the edition of the laws of this session; and the printed copy shall be evidence in like manner as other printed laws.

(a) In said section are named James Tilton, George Monro, John Brinkle, Richard E. Cochran and Arnold Naudain physicians of the County of Newcastle, Joseph B. Harris, William W. Morris, Arthur Johns, John Adams and James P. Lofland physicians of the County of Kent; and James Derickson, Joseph Maul, Isaac Robinson, Edward Dingle, jr. and John White physicians of the County of Sussex.

[ & For note (b) see foot of next page.]

Sect. 11. If the said President and Fellows of the Medical Society of Delaware shall not signify (*b*) to the Governor their acceptance of this Act within nine months from the passing thereof, it shall cease; and the printed journal of the Senate or the printed journal of the House of Representatives, containing the message of the Governor communicating to the General Assembly the fact that the acceptance of this Act has been signified to him, shall be conclusive evidence to prove that this Act has been accepted by the said President and Fellows of the Medical Society of Delaware, and that such acceptance has been signified to the Governor, and every fact stated in said message upon the subject.

10 Evidence of acceptance

*Passed at Dover, February 4, 1822.*

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PILOTS.

**AN ACT for the relief of distressed and decayed pilots, their widows and children.**

1819

Sect. 1. Every ship or other vessel arriving from, or bound to, any foreign port or place, and every ship or other vessel of the burden of [one (*a*) hundred tons or more] sailing from, or bound to, any port in the State of Delaware, except ships or other vessels belonging to citizens of this State, shall be obliged to receive a pilot: and it shall be the duty of the master of every such ship or other vessel within thirty-six hours next after the arrival of such ship or other vessel at any port in this State to report to the collector of the port of Wilmington the name of such ship or other vessel, her draught of water and the name of the pilot who shall have conducted her to the port; and where any such ship or other vessel shall be outward bound, the master of such ship or other vessel shall make known to the collector of the port of Wilmington the name of such ship or other vessel, and the pilot who is to conduct her to the capes, and her draught of water at that time: and the collector of the port aforesaid is hereby authorized by the authority aforesaid, or some suitable person to be appointed by him, or in case of his declining to act or appoint as aforesaid, then a suitable person to be appointed by the society for the relief of distressed and decayed pilots their widows and children is hereby authorized to enter every such ship or other vessel in a book to be by him kept for that purpose; and if the master of any ship or other vessel shall neglect to make such report, he shall forfeit and pay the sum of sixty dollars: and if the master of any such ship or other vessel shall refuse or neglect to take a pilot; the master, owner or consignee of such ship or other vessel shall forfeit and pay to the

1 Certain vessels obliged to receive pilots.

(a) 75 tons (8)

2 Duties enjoined on the masters of such vessels.

3 Penalty for neglect thereof:

4 Penalty for not taking a pilot.

(*b*) It appears by the Journal of the Senate of 1823, page 13, that the Governor communicated to the General Assembly a Resolution of the Medical Society of the State of Delaware at a stated annual meeting of said society on the 14th May 1822, signified to him by an instrument addressed to him under the hand of James Sykes, president, and Richard E Cochran, secretary, dated Dover May 25, 1822, by which resolution said society accepted this Act as part of their charter of incorporation.

5 Proviso.

collector aforesaid, or the person who may be appointed as aforesaid, a sum equal to the half pilotage of such ship or other vessel to and from the city of Philadelphia to the capes of Delaware, to the use of the society for the relief of distressed and decayed pilots, their widows and children, incorporated by the Legislature of the State of Pennsylvania in the year one thousand seven hundred and eighty-nine, to be recovered as debts of like amount are recoverable by the existing laws of this State: *Provided always*, that where it shall appear to the officer or other person acting as aforesaid, that in case of an inward bound ship or other vessel a pilot did not offer, before she had reached Ready-island, or in case of an outward bound ship or other vessel, that a pilot could not be obtained for twenty-four hours after such ship or other vessel was ready to depart, the penalty aforesaid for not having a pilot shall not be incurred.

6 Collector of penalties to give bond, &amp;c

Sect. 2. The collector of the port of Wilmington in the District of Delaware so authorized, or other person appointed as is herein provided, before he enters on the duties of his office under the provisions of this Act, shall give bond with sufficient surety in the penalty of two thousand dollars lawful money of the United States to the Society for the relief of distressed and decayed pilots, their widows and children, conditioned for the faithful discharge of the trust reposed in him and the payment over to the society aforesaid of all such sum and sums of money as may remain in his hands upon settlement of his accounts; and shall settle his accounts with the said society annually, at such time as they shall require: and the said collector or other person so authorized shall receive for the performance of the duties herein enjoined and the trust reposed in him such sum as may be agreed on between him and the said society.

7 Compensation.

*Passed at Dover, 5 February, 1819.*

1825 A SUPPLEMENT to an Act entitled "*An Act for the relief of distressed and decayed pilots, their widows and children.*"

8 Vessels of 75 tons.

Section 1. Every ship or other vessel arriving from, or bound to, any foreign port or place, and every ship or other vessel of the burden of seventy-five tons or more sailing from or bound to, any port in the State of Delaware, excepting ships or other vessels belonging to citizens of this State, shall be obliged to receive a pilot, in the same manner and as is provided and enacted in the Act, to which this is a supplement, respecting ships and other vessels of the burden of one hundred tons or more; and every provision and clause in the Act, to which this is a supplement, shall extend to and be in force after the passage of this Act, as it respects such ships or other vessels of the burden of seventy-five tons or more, and the master thereof, and certain duties enjoined upon the collector of the port of Wilmington or other person appointed to receive such pilotage.

*Passed at Dover, January 31, 1825.*

I.

AN ACT to consolidate and amend the laws for the relief of the Poor. 1829

Section 1. There shall be Trustees of the poor for the several counties of this State, and their number and residence shall be as follows: For New-Castle 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 in 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.

1 Trustees of the poor.

for Newcastle

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.

2 Term of office.

3 Vacancy.

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.

4 Qualifications.

Sect. 2. 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.

5 Trustees now in office.

Sect. 3. 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.

6 Appointment of Trustees.

(3)

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.

7 Oath.

If any person appointed to be a Trustee of the poor shall refuse

8 Penalty



refu ing to  
serve.

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.

9 Corpora-  
tions.  
New-Castle.

Kent.

Sussex.  
10 corporate  
powers,

10 rights.

11 dates.

12 Limitation  
of property.

13 Charge of  
the poor.

14 Meetings  
of Trustees,  
when held.

15 records.  
16 chairman,  
clerk, treas-  
urer.

Sect. 4. The Trustees of the poor for New-Castle county and their successors be and hereby are continued and established a corporation by the name of *The Trustees of the poor of New-Castle 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, goods, chattels, 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.

*Provided*, that neither of the aforesaid corporations shall hold property exceeding in amount twenty thousand dollars or exercise any banking powers.

Sect. 5. The aforesaid corporations shall severally have the superintendency 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 of 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.

Sect. 6. 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 New-Castle 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 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.

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 :

17 Treasurers bond.

*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.*

And to the said obligation there shall be subjoined a warrant of attorney to confess judgment thereon. 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. The said Treasurer shall annually on the first Tuesday 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.

18 judg't. bond.

19 account.

20 voucher.

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 :

21 Overseer.

his bond.

*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.*

judgt.

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

22 Duties of overseer as to admission into poor house. (Levy Court 129, 131) pages 391, 392

as to lists  
of paupers &  
accounts.

which cases any two Trustees may in their discretion give an order.

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.

in employing  
& governing  
paupers.

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 behavior by such means as may be ordered by the Trustees; provided that corporal punishment shall not be inflicted.

23 Dismissal  
of paupers.

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 dismissal.

24 improperly  
suffering a  
person to be  
in poor-house  
25 Overseers  
salary.

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.

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.

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 compensation.

26 Rules and  
by-laws

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.

27 Female ne-  
gro or mulatto  
delivered of  
bastard in  
poor house.

Sect. 7. 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 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."

(Apprentices  
17, 26, 27, 28,  
29, 31--41, 45,  
46.)

28 Marriage  
of pauper—  
forbidden  
penalty on  
overseer and  
preacher

Sect. 8. 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.

Sect. 9. 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 spirituous, fermented or expressed liquor; every such person shall be deemed guilty of a misdemeanor and on conviction thereof shall pay to the State a fine not exceeding fifty dollars.

29 Dealing  
&c with pau-  
pers.

penalty

Sect. 10. 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, until 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 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.

30 Persons  
not in poor  
house—relief.

31 burial  
charges.

32 Paupers in  
Sussex, sup-  
ported—out  
poor house.

33 number  
limited.

34 account

laid before  
Levy Court

Sect. 11. 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.

35 Place of  
settlement.

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

acquired.

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.

36 Persons likely to become a charge removed.

Sect. 12. 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.

37 unless security be given.

38 Persons in poor house, not having settlement removed.

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 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.

39 Improper removal.

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 the 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.

40 Trustees of one county liable to Trustees of another.

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.

(42)

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.

The Court of General Quarter Sessions of the Peace and Gaol 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 months before the application to the court.

41 Court of Q'r. Sess. jurisdiction.

42 Limitation

Sect. 13. 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 liable; several relations of the same order shall if able 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.

43 Liability of relations.

order of liability.

44 power of Q'r. Sessions

Sect. 14. 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 chattels, 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 up of such children, and for want of goods and chattels, 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

45 Power of Trustees—in case of desertion of wife or children

46 sequestration

47. lien of sequestration

48 order to  
sell goods

49 power to  
sell lands

50 effect of  
seizure

51 Appeal

52 proceed-  
ings thereon

53 Desertion  
of wife or  
children—  
& not suffi-  
cient property

goods and chattels, 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. 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.

The husband, father or mother, whose property shall be so sequestered may at any time within one 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 chattels 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.

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 Gaol 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 enforce 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.

54 power of  
Gr. Sessions

55 power of  
Justice of the  
Peace

SECT. 15. 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.

56 Remedy  
ag't persons  
bringing in,  
or retaining  
non-residents  
&c.

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 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.

57 Liability  
of corporat'ns

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

58 Licenses  
for landing  
passengers  
from foreign  
country

59 One dollar  
for each per-  
son



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 liability on the ground of the landing of the persons named in the license and from all obligation to receive again or remove said persons.

60 Penalty  
for landing  
passengers  
without  
license

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 inquire 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.

61 Duty of  
officer grant-  
ing license  
62 proceeding  
for penalty

63 Allowance  
to constable

Sect. 16. 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.

64 Judges,  
Justices, wit-  
nesses not  
disqualified

Sect. 17. 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.

65 gen'l issue

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.

66 Poor Tax  
(Levy Ct. 37)

Sect. 18. 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.

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 expense shall have been incurred.

67 Expenses  
of poor house  
published an-  
nually

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 expenses of persons not in the poor house with the items, with a state-

ment concerning the paupers supported in the poor house, classing them so as to shew the number of white and colored persons, and of the males and females, and different ages of each.

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.

68 No trustee treasurer or overseer to furnish article for poor house  
69 penalty

*Passed at Dover, February 12, 1829.*

## II.

*AN ACT authorizing the " Trustees of the poor of Kent county" to remove from the poor house of Kent county to the hospital in Philadelphia lunatic and insane persons in certain cases.*

1816

Section 1. It shall be lawful for the Trustees of the poor of Kent county, and they are hereby authorized, to cause to be removed from the poor house of Kent county to the hospital in Philadelphia any lunatic or insane person or persons now admitted or received into or confined in, said poor house, or hereafter to be admitted or received into, or confined in, said poor house, and for that purpose to make contracts with the person or persons having the care, management or government of the said hospital or authorized to make contracts for admission into said hospital and to defray all charges and expenses of removing such lunatic or insane person or persons to the said hospital and of keeping, maintaining and supporting him or them in the said hospital; all which charges and expenses so defrayed and paid shall be allowed to the said Trustees of the poor in their settlements with the Levy Court of Kent county.

70 Power of Trustees of Kent county to remove insane persons to hospital in Philadelphia (71)

Sect. 2. *Provided always*, That no order for any removal as aforesaid shall be made except with the concurrence of two thirds of all the Trustees of the poor for Kent county.

71 Two thirds concurring

*Passed at Dover, 15 February 1816.*

—o—

## PRACTICE.

*AN ACT concerning bills of exception, cases stated and verdicts.*

1821

Section 1. 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

1 Bill of Exceptions

upon such point of law; and the Chief Justice of the court, or if he be not present at the trial, the Justices 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 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.

2 when not  
allowable  
3 when pro-  
posed

There shall be no exception to the allowance of a challenge nor to any direction respecting the manner of conducting the trial.

4 when sign-  
ed

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 Justices. 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.

6 case stated

Sect. 2. 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.

6 verdict

Sect. 3. *And be it declared and enacted*, That a jury may in any case find a general or a special verdict.

4 papers tak-  
en by Jury  
6 Binney 238

Sect. 4. 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.*

—o—

## PRISONERS & GAOLS.

### I.

1789

*AN ACT empowering and requiring the keepers of the public gaols, in the Delaware State, to receive and safe keep all prisoners committed under the authority of the United States.*

Whereas the Congress of the United States have recommended to the Legislatures of the several States to pass laws making it expressly the duty of the keepers of their gaols to receive and safe keep therein all prisoners committed under the authority of the United States, until they shall be discharged by the due course of the laws thereof, under the like penalties, as in the case of prisoners committed under the authority of such States respectively; the United States to pay for the use and keeping of such gaols at the rate of fifty cents *per* month for each prisoner, that shall under their authority be committed thereto, during the time such

prisoners shall be therein confined; and also to support such of said prisoners as shall be committed for offences :

The sheriffs, gaolers and other keepers of the public gaols in the several counties of this State are hereby authorized, required and commanded to receive and safe keep in the gaols of their respective counties all prisoners, which shall be committed under the authority of the United States, until they shall be discharged by the due course of the laws thereof, under the like pains and penalties, as in the case of prisoners committed to their custody under the laws of this State : *Provided always nevertheless*, That the United States shall pay or cause to be paid for the use and keeping of such gaols at the rate of fifty cents *per* month for each prisoner, that shall under their authority be committed thereto, during the time such prisoners shall be therein confined, and also shall support such of said prisoners, as shall be committed for offences.

1 Prisoners  
committed by  
authority U.  
States

*Passed October 24, 1789.*

## II.

### AN ACT concerning gaols and the treatment of persons under arrest. 1827

Section 1. 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 behavior 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.

2 Sheriff's  
charge of  
gaol

Sect. 2. 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 New-Castle county the overseer shall be appointed as prescribed by law.

3 Work house.

Sect. 3. 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.

4 Fuel & bed.  
ding for pri-  
soners

Sect. 4. 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 establish for board in said gaol, or such as shall be established by the Levy Court and Court of Appeal in each county, which rate the said Levy Court and Court of Appeal 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

5 Board of  
prisoners

evidence, and every person committed upon charge of a crime or misdemeanor, 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 misdemeanor, 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, whisky, rum, brandy or other fermented, expressed or spirituous liquor.

6 Spirituous  
or other li-  
quors not dis-  
posed of in  
gaol, &c.

7 Person ar-  
rested not  
carried to ta-  
vern, &c.  
without con-  
sent

8 ease or favor

9 Commis-  
sioners of  
gaols

10 Their oath

11 Time of  
meetings,  
quorum, pow-  
ers

Sect. 5. A person 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 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 favor, nor any fee or charge not allowed by law.

Sect. 6. 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 appointment; and if the place of any commissioner become vacant by death, resignation, removal, refusal or otherwise, the said court 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 Court and Court 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.

12 Compensation  
13 Restriction  
as to N. Castle

Sect. 7. If any sheriff, under-sheriff, keeper of a gaol, coroner, constable, or other officer, shall offend against this Act in any particular, every such offender shall be deemed guilty of a misdemeanor and upon conviction thereof shall forfeit and pay to the State a fine not less than twenty dollars nor exceeding two hundred dollars.

14 penalty

Sect. 8. 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 misdemeanor, and upon conviction thereof he shall forfeit and pay to the State a fine not less than ten dollars nor exceeding fifty dollars.

15 Receipts  
for money  
paid by prisoners

*Passed at Dover, February 5, 1827.*

### III.

AN ACT for the better regulation of the gaol and work-house in the county of New-Castle and for other purposes. 1807

Whereas the laws heretofore made have not answered all the good purposes thereby intended in establishing regulations for the gaol and work-house in the county of New-Castle; for remedy whereof,—

16 Gaol in  
N. Castle

Section 1. The Levy Court of New-Castle county shall and they are hereby directed to appoint annually at their meeting in the month of March three of the Trustees of the poor of the county aforesaid or such other persons, as they may appoint, as commissioners of the public gaol and work-house of said county, who shall meet at the Court-House in said town on the first Tuesday of April next and on the first Tuesday of every third month thereafter or oftener, if necessary; and at such meetings the said commissioners

17 Commissioners

18 powers &  
duties

or a majority of them shall make all such good and wholesome ordinances, rules and by-laws as they shall think proper, for the direction, government and support of the gaol and work-house of said county, and also for the cleanliness and employment of all such persons as may be committed thereto; all which ordinances, rules and by-laws, shall be binding and obligatory on all persons concerned, until they shall be repealed or altered: *Provided always*, That the said ordinances, rules and by-laws be no ways contrary to the laws of the State.

19 Overseer

Sect. 2. It shall be the duty of the Levy Court and they or a majority of them are hereby authorized to appoint annually an overseer for the work-house in said county of New-Castle and such other officers and servants, as they shall think proper; and the said overseer shall receive for his services such compensation, as shall be allowed by the said Levy Court.

20 His bond

Sect. 3. The overseers of the work-house to be appointed in manner aforesaid shall enter into bond with two or more good and sufficient sureties to be approved by the Levy Court in the sum of one thousand dollars payable to the said Levy Court, conditioned as follows: to wit, *The condition of the above obligation is such that if the above bounden A. B. as overseer of the work-house of New-Castle county shall well and truly discharge the duty and trust reposed in him as overseer according to the direction and true intent and meaning of an Act of the General Assembly entitled, "An Act for the better regulation of the gaol and work-house in the county of New-Castle, and for other purposes," then the above obligation to be void and of no effect, otherwise to be and remain in full force and virtue in law.*

21 Articles &c  
for prisoners

Sect. 4. The commissioners so appointed by the Levy Court or a majority of them are hereby directed and required to purchase for the use of said gaol and work-house in the said county of New-Castle sufficient working tools, beds and bedding and such other necessary articles, as will maintain and fully employ such person or persons as may be committed to the gaol or work-house of said county, and lay their accounts before the Levy Court, and when allowed shall be provided for and paid as other public accounts are.

22 Duty of  
the overseer

Sect. 5. The overseer of the work-house shall compel and oblige every of the persons, who may be committed to his custody if of sufficient ability, to work and labor; and the produce of such labor he is hereby directed to sell, and the money arising from such sale or from their labor, only where materials or employment are furnished by others, shall be applied to their maintenance and support.

23 Prisoners  
misbehaving

Sect. 6. Upon complaint and due proof made by the overseer of the work-house or keeper of the gaol to the commissioners or a majority of them, that any person or persons in the work-house or gaol hath behaved him or herself in a disorderly manner or hath refused or neglected to perform his or her duty, labor or task or hath disobeyed or violated any of the ordinances, rules and by-laws of the said work-house and gaol, it shall and may be lawful for the commissioners or a majority of them to order and direct such moderate and proper correction, as the case may require.

24 Accounts

Sect. 7. The overseer of the said work-house shall keep a fair

and regular list of all persons committed to his custody, together with their ages as near as can be ascertained, and the time when committed and discharged, and shall lay a regular and fair account in writing of all materials, necessaries and other things coming into his hands, and of all expenses and charges attending their maintenance and support, and all monies received by him for the sale of the produce of their labor and otherwise, and shall settle his accounts with the Levy Court, at their meeting in the month of March annually, and pay over any money that may be remaining in his hands to the Treasurer of said county.

Sect. 8. Upon complaint made by the said commissioners, it shall and may be lawful for the Levy Court or a majority of them to remove the said overseer and all other officers by them to be appointed in pursuance of this Act. and appoint others to supply the vacancy occasioned by their removal. 25 Overseer removable

Sect. 9. The Levy Court shall at their meeting in the month of March annually settle and pay the said commissioners the sum of two dollars for each and every day's service as commissioners of the said gaol and work-house, by orders drawn on the Treasurer of said county; and shall, in case of a vacancy either by death or inability to act or removal out of the county of either or any of the commissioners, supply such vacancy for the residue of the time said commissioner was appointed for. 25 Compensation to commissioners

*Passed at Dover, January 29, 1807.*

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## PUBLIC DEMANDS AND WITNESSES' FEES.

*AN ACT against the purchase of the fees of witnesses in certain cases, and of certain public demands before allowance.* 1829

Section 1. 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 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. 1 Witnesses' fees—purchased by Clerk or Prothon'y penalty

Sect. 2. 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. 2 Duty of Levy Court.—in case of demand on county—purchased before allowance

*Passed at Dover, February 12, 1829.*



## PUBLIC OFFICES.

## I.

1795 **AN ACT** to provide for the better regulation of the public offices of the several counties of this State, and for other purposes therein mentioned.

(Constitution  
92)  
(Courts 105,  
107)†

Whereas much inconvenience hath been experienced by the good people of this State from not having access at all times to the offices and papers belonging to the several public offices in this State; And whereas the safety of the papers and records belonging to, or in the custody of, the respective prothonotaries of the Court of Common Pleas, Clerks of the Supreme Court, Registers for the probate of wills and granting letters of administration, Clerks of the Orphans Court, Clerks of the Peace, Recorders of deeds and Sheriffs in the several counties in this State, is an object of great importance to the citizens thereof:

1 Public Off-  
ces

Section 1. The respective prothonotaries of the Court of Common Pleas, Clerks of the Supreme Court, Registers for the probate of wills and granting letters of administration, Clerks of the Orphans Court, Clerks of the Peace, Recorders of deeds, and Sheriffs in the several counties in this State shall, from and after the passing of this Act, keep all records, record books, original papers and every other matter and thing belonging to their respective offices in the town in each county in which the Supreme Court and Court of Common Pleas are usually held; and the said several offices shall at all times (Sundays excepted) be kept open by the respective officers aforesaid for the transaction of business.

places

2 open at all  
times, except  
Sundays

3 Penalty

Sect. 2. If any officer as aforesaid shall refuse or neglect to attend at the respective towns aforesaid for the transaction of business belonging his office at all times (Sundays excepted,) he shall for every such offence forfeit the sum of eight dollars to be paid to the State Treasurer for the use of the State, upon conviction by indictment in the Court of General Sessions of the Peace and Gaol Delivery in the county, in which such officer holds his office. *Provided nevertheless*, That it shall be lawful for a deputy of any of the said officers to attend for the performance of such services as are strictly ministerial.

4 deputies

*Passed February 7, 1795.*

## II.

1797 **AN ACT** to transfer certain public records into the Register's office of the several counties of this State respectively, and for other purposes.

(Constitution  
80, 81)

Whereas, for the convenience of the public, it is necessary, that certain records of the Orphans Court under the late constitution of this State, should be transferred to the Register's office of the several counties respectively, as connected with those offices under the present constitution and laws of the State:

5 Records  
transferred to

Section 1. Immediately after the publication of this Act, it shall be the duty of the clerks of the Orphans Courts in the several

counties of this State and they are hereby required to deliver over into possession of the Register of wills in the respective counties, all administration and testamentary bonds, all accounts of deceased persons' estates settled by the late Orphans Courts, and generally all other papers and records whatsoever in their possession, connected with the said office of Register of wills under the present constitution and laws of this State. Register's office

Sect. 2. *And whereas* it is necessary, that an office should be provided for the safe-keeping of the books and papers appertaining to the Recorder's office in the county of Kent:—The Recorder of deeds for the county of Kent be and he is hereby authorized and empowered to use and occupy as a public office, the lower room in the south-east corner of the State House in the town of Dover. 6 Recorder's office—Kent

### III.

AN ACT to preserve the public buildings and records from destruction by fire. 1825

Section 1. It shall be the duty of every public officer of this State or either of the counties thereof, who shall occupy any room or rooms for the transaction of the business of his office in any Court House in this State, or any other building, to extinguish or cause to be extinguished all the fires which may be in such room or rooms, upon retiring therefrom in the evening after having performed the duties of the day: and if any such officer shall omit to extinguish or cause to be extinguished any fire in such room or rooms, before he shall retire therefrom as aforesaid, without leaving any careful agent therein to guard against injury from such fire, he shall for every such offence forfeit and pay to the State the sum of fifty dollars with costs of prosecution to be recovered by indictment in the Court of General Quarter Sessions of the Peace and Gaol Delivery in the county in which such offence shall be committed; and if any public building in this State being the property of the State or of any of the counties thereof shall hereafter be destroyed or in any manner injured by fire arising from the carelessness of any such officer, his deputy or deputies, agent or agents, or from his or their omission to comply with the provisions of this Act, such officer shall for every such offence forfeit his office. 7 Care of fire in public offices  
8 penalty for neglect  
9 forfeiture

*Passed at Dover, February 9, 1825.*

## PUBLIC RECOGNIZANCES & BONDS.

### I.

AN ACT requiring sheriffs to give security.

1793

Section 1. Every sheriff now in commission or hereafter to be commissioned within the several counties of this State, at the next Court of Common Pleas to be held in the respective counties there- 1 Sheriff's recognizances (Bonds, &c 2)

(5) of after the first Tuesday of October annually and within the three first days of the term, shall enter into a recognizance jointly and severally in the same court with three or more good and substantial freeholders of the county to be approved of by the said court, *That is to say* ; The sheriff of the county of New Castle and his sureties in the sum of sixteen thousand dollars, and the sheriff of the county of Kent and his sureties in the sum of fourteen thousand dollars and the sheriff of the county of Sussex and his sureties in the sum of twelve thousand dollars, upon condition, *That if he the said sheriff shall and do well and truly serve and execute all writs and process to him directed without delay, and shall from time to time, upon request to him made for that purpose, well and truly pay or cause to be paid to the several suitors and parties interested therein, their lawful agents, factors or assigns and to the several officers all and every sum and sums of money to them respectively belonging, which shall come to his hands or which it shall be his duty to collect and receive, and receive, collect and pay over all public taxes, whatsoever committed to him for collection, and shall and do from time to time and at all times during his continuance in office of sheriff well and faithfully execute the said office, and perform in every thing the duty in him reposed ; then the said recognizance to be void, otherwise to be and remain in full force and virtue.*

(Execut'n 55)

2 Security neglected—office forfeited

3 Governor to appoint, unless certificate &c.

4 Judges neglecting certificate penalty

Sect. 2. If any sheriff now in commission, or hereafter to be commissioned, shall neglect or refuse to give such security at the time and in the manner as before directed ; in every such case the sheriff so neglecting or refusing shall *ipso facto* forfeit his said office of sheriff ; and the Governor for the time being shall, unless the said court shall certify to him within fifteen days after the said first three days, that the said sheriff hath given security at the time and in the manner as before directed, commission some other sufficient person being an inhabitant of the county where such forfeiture shall happen, to supply the place of such as shall so neglect or refuse as aforesaid, who shall act and continue in the office of sheriff, on entering into recognizance with sureties as before required at next Court of Common Pleas after his appointment, until the next General Election, and until the said office shall be duly filled after such election.

Sect. 3. If the said court shall neglect or refuse to certify to the Governor within the time limited, that the said sheriff hath given security at the time and in the manner aforesaid, provided he hath so done, the said Judges of the said court shall forfeit and pay to the said sheriff so injured four thousand dollars to be recovered by action of debt, bill or plaint, in the Supreme Court.

Passed June 17, 1793.

1821

A SUPPLEMENT to the Act, entitled “*An Act requiring sheriffs to give security.*”

5 Recognizance—in case of appointm't to fill vacancy

Section 1. In all cases, in which the Governor shall fill a vacancy in the office of sheriff by a new appointment to continue unto the next General Election and until a successor shall be chosen and duly qualified, the person so appointed shall together with three

or more good and substantial freeholders of the county within fifteen days after said appointment acknowledge a joint and several recognizance to the State of Delaware before the Chancellor or some Judge of the Supreme Court or Court of Common Pleas residing in the county, in the sum of twelve thousand dollars, upon the condition expressed and set forth in the first section of the Act, to which this is a supplement; which said recognizance shall be certified by the Chancellor or Judge, before whom the same shall be acknowledged to the next Court of Common Pleas to be held in and for the county. 6 certified

Sect. 2. If any person so appointed as aforesaid shall neglect or refuse to give such security within the time and in the manner aforesaid, or shall refuse or neglect for the space of fifteen days to deposit in the office of the Secretary of State a certificate by the Chancellor or Judge, as the case may be, before whom the recognizance was acknowledged, that the said sheriff hath given security at the time and in the manner required by this Act, he shall *ipso facto* forfeit the office of sheriff. 7 Security neglected—forfeiture of office

Sect. 3. It shall be the duty of the Chancellor or any Judge of the Supreme Court or Court of Common Pleas residing in the county, to whom any person appointed sheriff as aforesaid shall apply, to take the recognizance aforesaid, and thereupon immediately to make out and deliver a certificate thereof to the said sheriff. 8 Duty of Chancellor or Judge

*Passed at Dover, January 18, 1821.*

## II.

### AN ACT concerning the recognizances of officers.

1821

Section 1. Every recognizance which shall, after the passing of this Act, be acknowledged for a certain sum of money, conditioned for the due performance by any officer of the duties of his office, shall be a lien upon the lands and tenements of every such officer to the amount of the sum mentioned in the body of such recognizance from the time of the caption thereof. 9 Recognizance, lien of lands, &c. of principal (13)

*Passed at Dover, January 25, 1821.*

## III.

### AN ACT requiring certain officers to give security for the faithful performance of their official duties.

1826

Section 1. Every 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 and Clerk of the Orphans Court hereafter to be appointed in the several counties of this State shall in the Court of Common Pleas in the county in and for which he shall be appointed at the next term after his appointment, with two or more sufficient sureties being freeholders of such county become bound to the State of Delaware by a joint and several obligation to be 10 Official obligations—Coroner, Register, Recorder, Clk S. Ct. Prot'y Clk of Peace Clk O. Ct. (15)

together with the sureties therein approved by the said court, in the penalty of three thousand dollars lawful money of the United States of America, with condition according to the following form:

condition of  
bond

*The condition of the above written obligation is such, that if the above named* *who has been duly appointed to be* *shall and do well and diligently execute his office of* *as aforesaid, and duly and faithfully fulfil and perform all the trusts and duties to the said office appertaining and truly and without delay deliver to his successor in office the seal and all the books, records and papers belonging to said office safe and undefaced, then the said obligation shall be void and of no effect or else shall remain in full force and virtue : except that in the condition of the obligation of coroner and his sureties, the clause beginning with the words " and truly" and ending with the word " undefaced" shall be omitted : such obligation shall be acknowledged by the obligors ; and upon its being approved a certificate shall be indorsed thereon and signed by the Judges present according to the following form, viz :*

11 Certificate  
of approval

*county ss. In the Court of Common Pleas in said county at the day of 18 this obligation was acknowledged by to be their act and deed, and being inspected was together with the sureties therein approved. Witness our hands the day and year aforesaid.*

12 recorded

The obligation of the Recorder of deeds shall be filed in the court wherein it shall be acknowledged, and the prothonotary shall record it in the judgment docket of said court ; each of the other obligations executed pursuant to this Act shall immediately upon being certified as aforesaid be delivered, under the direction of the court by the sheriff or his deputy to the Recorder of deeds of the same county, who shall forthwith record the same, and keep the same on file in his office ; and every obligation executed and acknowledged and approved pursuant to this Act shall from the time of the acknowledging and approving of the same be a lien upon all the lands, tenements and hereditaments of the officer being the principal obligor therein, within the county wherein such obligation shall be acknowledged and approved ; but the same shall not be a lien upon the lands, tenements or hereditaments of the sureties therein.

13 lien of  
lands, &c. of  
principal  
(9)

14 Recorder  
entering on  
office to de-  
liver list, &c

Sect. 3. Every Recorder of deeds hereafter to be appointed shall upon entering upon his office make out and deliver to the prothonotary for his county a list of all the books and records belonging to said office ; and the prothonotary shall record said list ; and such record or a copy of it shall be competent evidence ; any Recorder or Prothonotary refusing or neglecting to comply with this section shall forfeit and pay to the State a fine not exceeding fifty dollars to be recovered, with costs of prosecution, by indictment.

15 Non-com-  
pliance with  
sect. 1  
penalty

Sect. 4. Every officer coming within the purview of the first section of this Act, who shall refuse or neglect to observe and comply with the said section according to the true intent and meaning thereof, shall for such refusal or neglect forfeit and pay to the State a fine of not less than five hundred dollars nor more than one thousand dollars to be recovered with costs of prosecution by

indictment; and furthermore such officer so refusing or neglecting shall *ipso facto* forfeit his office.

Passed January 25, 1826.

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## RECORDER OF DEEDS.

AN ACT for acknowledging and recording deeds.

15 Geo. II.

Section 1. There shall be an Office of Record in each county of this government, which shall be called and styled *The office for recording of deeds*; and the Recorder shall duly attend the service of the same, and at his own proper costs and charges shall provide good large books of royal or other large paper, well bound and covered, wherein he shall record in a fair and legible hand all deeds and conveyances, which shall be brought to him for that purpose.

Office for recording of deeds (Public Offices, 1, 2 6) (Public Recognizances & Bonds 10) (Conveyances)

—o—

## RELIGIOUS SOCIETIES.

### I.

AN ACT for keeping a registry in religious societies.

Before Feb. 1703

The registry now kept, or which shall hereafter be kept by any religious society in their respective meeting book or books of any marriage, birth or burial, within this her Majesty's government, shall be held good and authentic, and shall be allowed of upon all occasions whatsoever.

1 Registry

### II.

AN ACT for the enabling religious societies of Protestants within this government to purchase lands for burying-grounds, churches, houses for worship, schools, &c.

17 Geo. II. (8-26) 27

Whereas sundry religious societies of people within this government professing the protestant religion have at their own respective costs and charges purchased small pieces of land within this government and thereon have erected churches and other houses of religious worship, school-houses, and inclosed part of the same lands for burying-grounds; And whereas the said lands were purchased and paid for by the said respective societies in the name or names of persons at that time being of, or professing themselves to be of, the same religious persuasion with the societies who made use of the names of the said persons as Trustees for and in behalf of the said societies; And whereas some of the said Trustees, or their heirs having afterwards changed their opinions and joined themselves to other religious societies of a different persuasion from the people by whom the said persons were at first intrusted, and upon pretext of their having the fee-simple of the lands so

2 Difficulties of religious societies in respect to lands, &c.

together with the sureties therein approved by the said court, in the penalty of three thousand dollars lawful money of the United States of America, with condition according to the following form:

condition of  
bond

*The condition of the above written obligation is such, that if the above named* *who has been duly appointed to be* *shall and do well and diligently execute his office of* *as aforesaid, and duly and faithfully fulfil and perform all the trusts and duties to the said office appertaining and truly and without delay deliver to his successor in office the seal and all the books, records and papers belonging to said office safe and undefaced, then the said obligation shall be void and of no effect or else shall remain in full force and virtue: except that in the condition of the obligation of coroner and his sureties, the clause beginning with the words "and truly" and ending with the word "undefaced" shall be omitted: such obligation shall be acknowledged by the obligors; and upon its being approved a certificate shall be indorsed thereon and signed by the Judges present according to the following form, viz:*

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*this obligation was acknowledged by to be their act and deed, and being inspected was together with the sureties therein approved. Witness our hands the day and year aforesaid.*

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lands, &c. of  
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(9)

14 Recorder  
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pliance with  
sect. 1  
penalty

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Office for recording of deeds  
(Public Offices, 1, 2 6)  
(Public Recognizances & Bonds 10)  
(Conveyances)

—o—

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(8-26)  
27

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2 Difficulties of religious societies in respect to lands, &c.



purchased in their names vested in them have contrary to the true intent and meaning of the first grant or gift attempted (by granting away the said lands, houses of religious worship and burying-grounds) to deprive the society of people in possession of the same, of the right and use of the said houses of worship and burying-grounds, to the great disquiet and uneasiness of many of the good people of this government; and others being intrusted in the like manner may hereafter do the same. For remedy whereof and for the better securing the several religious societies in the quiet and peaceable possession of their churches, houses of worship, school-houses, alms-houses, and burying-grounds within this government;—

3 Effect of grants intended for their benefit

a (16, 18)

Sect. 2. All gifts, grants or bargains and sales made of lands or tenements within this government to any person or persons in trust for societies of protestant churches, houses of religious worship, schools, alms-houses, and for burying-grounds, or for any of them shall be and are hereby ratified and confirmed to the person or persons, to whom the same were sold, given, or granted, their heirs and assigns in trust and not otherwise, but for the use (*a*) of the same religious societies, for whom they were at first so sold, given, granted or purchased, according to the true intent and meaning of such gifts, grants, or bargains and sales: and every sale, gift, grant or devise of any such Trustee or Trustees or any person or persons, in whose name or names the said lands for erecting churches, houses of religious worship, schools, alms-houses, or burying-grounds within this government were purchased, taken, or accepted, or the heirs or assigns of such Trustees shall be and are hereby declared to be for the sole use, benefit and behoof of the said respective societies, who have been in the peaceable possession of the same for the space of seven years next before the first day of April, in the year of our Lord one thousand seven hundred and forty-four, or for whose use the same were at first given, granted or devised and no other.

4 Religious societies may take, &c.  
b (14, 15, 17,) 27

Sect. 3. It shall and may be lawful to and for any religious societies of Protestants within this government to purchase, (*b*) take and receive by gift, grant or otherwise, for burying-grounds, erecting churches, houses of religious worship, schools, and alms-houses, for any estate whatsoever, and to hold the same for the uses aforesaid, of the lord of the fee by the accustomed rents.

5 only for the uses herein mentioned

Sect. 4. *Provided always*, That nothing in this Act contained shall be deemed, taken or construed to enable any of the said religious societies of people or any person or persons whatsoever in trust for them or to their use, to purchase, take, or receive any lands or tenements by gift, grant or otherwise, for or towards the maintenance or support of the said churches, houses of worship, schools, or alms-houses, or the people belonging to the same, or for any other use or purpose, save for the uses in this Act before mentioned.

6 Saving rights of others

Sect. 5. *Provided also*, That this Act nor any thing therein contained shall be deemed or construed to impeach the just right or title, which any person or persons may have to any of the lands or tenements herein before mentioned, so that they prosecute such their right or claim within the space of three years next after the publication of this Act.

## III.

AN ACT to enable all the religious denominations in this State to appoint Trustees, who shall be a body corporate, for the purpose of taking care of the temporalities of their respective congregations. 1787

Whereas petitions have been presented from sundry religious societies or congregations for Acts of incorporation for the better transacting the temporal concerns of said societies or congregations; and this General Assembly considering it their duty to countenance and encourage virtue and religion by every means in their power, and in the most expedient manner, desire that it may be enacted: 7 Incorporating

Section 1. Each and every religious society or congregation of Christians of whatever sect, order or denomination, which now are or hereafter may be in this State entitled to protection in the free exercise of their religion by the constitution and laws of this State, shall and are hereby authorized and empowered respectively to meet and assemble together at the usual place of meeting for public worship at any time hereafter by them to be agreed upon, giving at least ten days notice of the time and purpose of meeting by advertisements set up in public views at or near such place of meeting, and being so met and assembled shall or may by a plurality of voices of those met being of that society or congregation elect or chuse any number of their said society or congregation not exceeding seven nor less than three, to be Trustees of the same; which said Trustees and their successors in office are hereby constituted a body politic and corporate in deed, fact, name and in law, to all intents and purposes in this Act herein after set down and expressed, for ever by whatever name they, the said Trustees chosen and elected as aforesaid, shall take and assume in the manner herein after directed, and by that name they shall have perpetual succession. 8 Trustees elected

Sect. 2. The Trustees elected and chosen as aforesaid by any religious society or congregation, upon taking upon themselves any name and certifying the same under their hands and seals and causing such certificate to be recorded in the office of the Recorder of deeds of the county, in which such society or congregation shall usually assemble for public worship, such Trustees and their successors in office forever shall be known and distinguished in law in all cases whatsoever by the name they shall have so taken and recorded as aforesaid as fully to all intents and purposes, as though they were herein particularly named; and by such name they are hereby respectively constituted and shall forever thereafter be authorized in law to purchase, take, hold, receive, and enjoy any messuages, lands, tenements, rents and other hereditaments and real estate in fee-simple or otherwise, and also goods and chattels, sum and sums of money and personal estate whatsoever, to and for the use of their respective societies or congregations. 9 Notice of meeting 10 incorporation 11 Name 12 recorded

Sect. 3. *Provided always nevertheless.* That all gifts, grants, bargains, sales and conveyances of and for any messuages, lands, tenements, rents and other hereditaments, corporal or incorporeal whatsoever, and of and for any sum or sums of money, goods, 13 capacity to take, &c. 14 Gifts, Grants, &c. to requisites (5)

chattels, stocks in any public funds, securities for money or any other personal estate to be laid out or disposed of in the purchase of any lands, tenements, rents or other hereditaments, shall from and after the passing of this Act, be made by deed indented, sealed and delivered in the presence of two or more credible witnesses twelve calendar months at least next before the death of the vendor, donor, grantor or bargainor, and be recorded in the office for recording of deeds for the proper county within one year next after the execution thereof, and the same to take effect for the use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause or agreement whatsoever for the benefit of the vendor or bargainor, donor or grantor, or of any person or persons claiming under him; otherwise such gifts, grants, bargains, sales and conveyances made in any other manner shall be void.

15 Bona Fide  
purchases

Sect. 4. *Provided*. That nothing herein before mentioned, relating to the sealing and delivering of any deed or deeds twelve calendar months at least before the death of the grantor, shall extend to any purchase of any estate or interest in any lands, tenements or hereditaments to be made really and *bona fide* for a full and valuable consideration actually paid at or before the making of such conveyance, without fraud or collusion.

16 Grants, &c  
before Oct 20  
1744

Sect. 5. All lands, tenements, hereditaments, and real estate *bona fide* given, granted, conveyed or transferred by any last will in writing, deed of gift, bargain and sale, or other lawful conveyance to any religious society or congregation or to any person or persons in trust for them and to their use before the twentieth day of October, in the year of our Lord one thousand seven hundred and forty-four, the said congregation or any person in trust for them or expressly for their use having hitherto continued in the peaceable and quiet possession of the same hereditaments and real estate, and for the recovery whereof no action or actions hath or have been brought by any person or persons against any such religious societies or congregations or their Trustees, shall be and hereby are declared to be to and for the use of the same according to the purport and effect, true intent and meaning of such last will, deed of gift or bargain and sale or other lawful conveyance, and to and for no other use, intent or purpose whatsoever.

17 Limitation  
of rent or in-  
terest

Sect. 6. *Provided always nevertheless*. That the yearly rents and profits of the whole real estate to be held or enjoyed by any one of the said religious societies or congregations or by any other person or persons for their use shall not exceed or amount to more than one hundred pounds lawful money of this State; and that the yearly interest, value or income of the personal estate of such religious societies or congregations as aforesaid shall not exceed or amount to more than two hundred pounds lawful money as aforesaid.

18 Estates at  
date hereof  
vested in  
Trustees  
when elected

Sect. 7. All the estate, right, title, interest, use, possession, property, claim and demand whatsoever of the said societies or congregations respectively or any person or persons whatsoever in trust for them or for their use, as well in equity as in law, at the time of passing this present Act, of, in and to any lands, tenements, hereditaments, goods, chattels, effects, sum and sums of

money or other personal estate shall be and become vested in the said Trustees, to be chosen according to the direction of this Act in trust nevertheless and to and for the use of their societies or congregations respectively.

Sect. 8. The said Trustees of each respective society or congregation, which shall be chosen as aforesaid and their successors, by the name to be taken and recorded as aforesaid, shall and may give, grant and demise, assign, sell and otherwise dispose of all or any of their messuages, houses, lands, tenements, rents, possessions and other hereditaments and real estate and all other goods, chattels and other things aforesaid, as to them shall seem meet, for the use and benefit of the society or congregation to which they shall respectively belong: And also the said Trustees of each respective society or congregation, which shall be chosen as aforesaid by the name to be taken and recorded as aforesaid forever thereafter shall be able in law and capable to sue and be sued, implead and be impleaded, answer and be answered, defend and be defended in all Courts of Judicature whatsoever; and also, the said Trustees of each respective society or congregation to be chosen as aforesaid for the time being and their successors shall and may forever hereafter have and use a common seal with such device or devices, as they shall think proper, for sealing all and singular deeds, grants, conveyances, contracts, bonds, articles of agreement, assignments, powers and all and singular other affairs, touching and concerning the said corporation; and also the said respective Trustees and their successors forever hereafter may, as often as they shall judge expedient, break, change and new-make the same or any other their common seal.

19 Power & capacity of Trustees

20 common seal

Sect. 9. For perpetuating a line of succession in the Trustees of each respective society or congregation as aforesaid, it shall and may be lawful for the members of the said respective societies or congregations from time to time to meet and assemble at any time they may think proper, giving notice of such meeting as herein before directed for electing the first Trustees, and then and there at such meeting and meetings to elect other Trustees in the place and stead of those or either or any of those before elected, in case they shall see cause for removing any of the said Trustees, (provided such removal shall not be in less than one year after their appointment) and also to fill up vacancies of their Trustees occasioned by death, resignation or removal.

21 Trustees perpetuated

(9)

Sect. 10. It shall and may be lawful for the Trustees elected and chosen for each respective society or congregation as aforesaid and their successors from time to time, as they may find it necessary or expedient, to choose a chairman being one of their members, who shall keep in custody the common seal of their corporation and all the books, charters, deeds and writings in any way relating to the said corporation, and shall have power at all times hereafter, as occasion may require, to call a meeting of the said Trustees for the execution of all or any of the powers hereby given them; and in case of sickness, absence or death of the chairman, all the powers by this Act invested in the chairman shall be and remain in the eldest Trustee upon record, until the recovery or return of the chairman, or until a new chairman shall be chosen in manner aforesaid.

22 Chairman. his powers (25)

23 Majority  
may act

Sect. 11. All and every act and acts, order and orders of a majority of the Trustees of any society or congregation chosen as aforesaid, but not of a less number, consented and agreed to at such meeting of the said Trustees as aforesaid shall be and the same is and are hereby ratified, made good, valid and effectual to all intents and purposes, as if the whole number of the Trustees had consented and agreed thereto.

24 Minutes  
of proceed-  
ings of Trus-  
tees

Sect. 12. All the proceedings of the Trustees of each society elected and appointed as herein-before directed, shall from time to time be fairly entered in a book or books to be kept for that purpose by the chairman of the Trustees for the time being, of each respective society; which book or books together with the common seal of the corporation, to which they belong, and all charters, deeds, securities and writings whatsoever and also all monies in hand belonging or in any wise appertaining to the said corporation shall be delivered over by the former chairman to the chairman of the Trustees of such corporation newly elected for the time being, as such chairman shall from time to time be successively chosen, to be regularly filed and safely kept by each chairman for the mutual benefit of the society, to which he may respectively belong: unto which books and muniments any member of said society shall have free access at all reasonable times upon application to the chairman keeping the same.

25 records,  
seal, &c de-  
livered over  
by Chairman  
to successor

26 free access  
to records, &c.

Societies less  
than fifteen  
families not  
within this  
Act

Sect. 13. *Provided always*, That nothing in this Act contained shall be construed to authorize any religious society in this State to elect Trustees, become incorporate, or be in any wise entitled to the benefit of this Act, unless such society shall consist at the time of such their election of Trustees for the purposes herein-before mentioned of at least fifteen families stately assembling at one place of worship, being supporters of the gospel in said society or congregation.

27 Repeal

Sect. 14. So much of an Act, intituled, *An Act for enabling religious societies of Protestants within this government to purchase lands for burying-grounds, churches, houses for worship, schools, and so forth*, passed in the seventeenth year of the reign of George the Second, as by this present Act is altered or amended, is hereby repealed, made null and void.

*Passed February 3, 1787.*

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## RETAILERS.

1821

AN ACT laying duties on licenses to retailers of foreign goods, wares and merchandise.

1 Retailers  
within this  
Act

Section 1. Every person, who shall deal in the selling of any goods, wares or merchandise, except such as are of the growth, produce or manufacture of the United States and exclusively dealt in, or except such as are sold in the original cask, case, box or package wherein the same shall have been imported and exclusively thus sold, shall be deemed and taken to be a retailer of merchandise within the meaning of this Act.

Sect. 2. Every person within this State, who shall on the first day of June next be a retail dealer in goods, wares or merchandise except as before excepted, shall before the said day, and every person, who after the said day shall become or intend to become such retail dealer as aforesaid, before he or she shall begin to sell by retail as aforesaid any goods, wares or merchandise as aforesaid, apply for and obtain from the clerk of the peace of the county in which he or she may reside, a license for carrying on the business of retailing as aforesaid; which license shall be granted for the term of one year, and shall be renewed annually: and if any person within this State shall after the said first day of June next deal in the selling of merchandise as aforesaid without having obtained a license therefor, such person shall, in addition to the payment of the duty, forfeit and pay the sum of one hundred dollars with full costs of prosecution to be recovered by indictment in any Court of General Quarter Sessions of the Peace and Gaol Delivery in this State: and no such license shall be sufficient for the selling of goods, wares and merchandise as aforesaid by retail at more than one place at the same time; and any person, who by color of such license shall sell any goods, wares and merchandise by retail as aforesaid at more than one place at the same time, shall be deemed to be without license, and shall forfeit and pay the like sum of one hundred dollars in addition to the duty as aforesaid to be recovered as herein before directed.

2 Licenses  
for Retailers

3 License to  
continually year  
(11, 13)  
4 dealing  
without li-  
cense

penalty

5 one license  
authorizes  
dealing at one  
place only

Sect. 3. The Secretary of State for the time being shall cause to be printed in proper form a license for retailing goods, wares and merchandise as aforesaid, which shall be sealed with the seal of his office, signed by the Governor, countersigned by the Secretary of State, and put into the hands of the clerks of the peace in the respective counties of this State to be by them distributed to any person, who may apply therefor, and pay the prices hereinafter directed; and the clerks of the peace respectively shall account for and pay over all monies arising from such licenses quarterly to the Secretary of State, to be by him paid over to the State Treasurer: and if any clerk of the peace in any county of this State shall neglect to do so for the space of sixty days after he should have so accounted for and made such quarterly payment of the monies arising from the sale of licenses in his county, he shall *ipso facto* forfeit his office, and be immediately liable to a suit for the recovery of all the said monies.

6 Licenses  
prepared by  
Secretary of  
State

7 distributed  
by Clerk of  
Peace (13)

monies paid  
over

8 Clerk of  
Peace neglect-  
ing to pay  
over  
penalty  
(Fees 66)

Sect. 6. The Secretary of State is hereby required and directed annually in the month of October to examine what number of the aforesaid licenses each of the said clerks may have on hand undistributed, which he shall deduct from the number delivered to said clerk, and whatever sum or sums of money the residue amounts to shall be forthwith paid over by the said clerks of the peace to the Secretary of State, for which he shall give two receipts, one of which shall be transmitted to the Auditor of accounts; and the said Secretary is hereby directed within one month after the receipt of all and every such sum or sums of money as aforesaid to pay the same into the State treasury, for which he shall take duplicate receipts, one of which he shall transmit to the Auditor of accounts.

9 Settlement  
with Cl'k of  
the Peace

receipt to Au-  
ditor

10 Secretary  
to pay to St.  
Treasurer

receipt to Au-  
ditor

1822

**A SUPPLEMENT to the Act laying duties on licences to retailers of foreign goods, wares and merchandise.**

11 Certificate of stock at original prices, filed by retailers with Cl'k of Peace

12 affidavits

13 Licenses, & tax, & persons excepted

(7, 8)

14 Duty stated in the license

15 Collectors to deliver to Cl'k of Peace list of wholesale & retail dealers

16 duty of Attorney Gen'l

17 Appropriation

Section. 2. Every person or persons, who is or shall be deemed and taken to be a retailer or retailers of merchandise within the meaning of the Act, to which this is a supplement, shall in the month of May in this and every year hereafter file with the clerk of the peace in the county, in which he, she or they shall reside, a certificate in writing duly signed, in which he, she or they shall honestly and truly state the aggregate value of his, her or their stock of said goods, wares and merchandise on hand, or which he, she or they own or have in trade at the time of filing such statement, according to the original prices the same were purchased for, and to which said certificate shall be annexed or added the oath or affirmation of such person or persons made before the clerk of the peace or some Judge or Justice of the Peace, that according to the best of his, her or their knowledge and belief the value of the said goods, wares and merchandise, do not exceed the value or amount as stated in such certificate.

Sect. 3. Every such retailer of merchandise as aforesaid, except those who deal in dry goods only and whose stock in trade does not exceed two hundred dollars, and except *feme sole* traders in dry-goods only whose stock in trade does not exceed four hundred dollars and apothecaries who deal in medicines only, shall on or before the first day of June in this and every year hereafter pay to the clerk of the peace of the county, in which he, she or they shall reside, on taking out the license directed by the Act; to which this is a supplement, a tax or duty of twenty-five cents on each and every one hundred dollars value of the said goods, wares and merchandise as mentioned in the certificate to be filed as aforesaid.

Sect. 4. It shall be the duty of the clerk of the peace in each of the counties of this State in every license by him delivered out under the Act, to which this is a supplement, to state the duty or tax received by him therefor and the value of the goods according to the certificate filed as aforesaid.

Sect. 5. It shall be the duty of the collector of the taxes in each of the hundreds of the respective counties in the month of May in this and every year hereafter to make a list of all the wholesale and retail dealers of foreign merchandise within their respective hundreds, as far as they can ascertain the same, and on or before the first day of June in this and every year hereafter deliver the said list to the clerk of the peace of the county to be filed of record; and it shall be the duty of the Attorney General to compare the said lists with the certificates filed as aforesaid and to prepare and prosecute indictments against all, who appear not to have obtained a license, and who ought to have obtained the same.

Sect. 6. All the monies which shall be received for licenses aforesaid shall be placed to the credit and applied to the use of the State of Delaware.

*Passed at Dover, February 7, 1822.*

## I.

## AN ACT concerning Roads and Bridges.

1829

Section 1. 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 feet, twenty feet whereof shall be grubbed and cleared.

And 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.

Sect. 2. The charges of repairing, constructing and maintaining every public bridge crossing the dividing line between two counties shall be borne by the said counties in equal portions.

And 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;

In Kent County all such charges shall be borne by the county:

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:

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 all other bridges, that have heretofore been commonly supported at the expense of Sussex county, shall be borne by said county:

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:

1 Public Roads width in N. Castle

Kent Sussex

2 Repair

3 causeways (11)

4 bridges

5 Costs of bridges between counties

6 Costs of public roads and bridges (34-36)

7 in Kent

8 Sussex

(85-101)

except certain bridges

9 N. Castle



of public  
bridges, New  
Castle

power of Le-  
vy Court

10 Extent of  
this section

11 causeways

12 Owners of  
mills, &c. to  
maintain  
bridges, &c.  
in certain ca-  
ses

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 Gaol 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.

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 its limits: and no hundred shall be held to make or maintain a causeway in another hundred.

Sect. 3. 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 be-

ing 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 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 the "Act providing for the recovery of small debts," the provisions whereof are hereby extended to such debt; but if such amount exceed fifty dollars, it shall be recoverable in the Supreme Court or the Court 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.

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.

Sect. 4. There shall be allowed to every overseer of the roads for each day's service 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 New-Castle county by the

13 to keep wheel covered, &c.

14 Owner or tenant to keep bridge over ditch, in certain cases

15 Neglect of owner or tenant penalty (19)

16 duty of overseer—

who shall recover

17 double expenses

18 Penalty on overseer for neglect

19 Tenant's expenses, out of rent

20 Fees of overseers

commissioners of roads in the hundred in which the overseer is appointed.

20 Jurisdiction  
to lay out  
change or vacate roads

Sect. 5. 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 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 authorizing the laying out of such road or highway. The manner of exercising the jurisdiction shall be as follows:

21 proceedings

22 petition

23 appointment  
of freeholders

24 directions  
in case of  
new road

Whenever five or more freeholders of either county of this State shall prefer to the Court of General Quarter Sessions of the Peace and Gaol 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 impartial 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, authorizing them to employ, if necessary, a skilful and impartial surveyor to be nominated by them or a majority of them, and directing them as herein after 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 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

changing a  
road

distances thereof, with notes of the most remarkable places and the wood land, clear land and improvements through or by which the same passes, and also representing so much of the original road as is affected 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 inclose 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 cost 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.

vacating a  
road

The return upon one order shall not be conclusive, either for laying out, changing or vacating a 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.

25 Order of  
review  
(27)

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 any other case a second order of review shall be

26 how granted & when  
second order

27 Within  
what time  
application

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 for their own information may make further orders of review:

28 Confirmation

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.

29 Want of  
diligence

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.

30 Effect of  
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.

31 Approba-  
tion of Levy  
Court

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.

32 Crops ta-  
ken, before  
road opened

And if any such road hereafter to be laid out shall pass through an inclosure, 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.

33 Oath of  
freeholders &  
surveyor

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 judg-

ment 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.

The acts of a majority of the freeholders shall be as valid, as if concurred in by all of them.

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 New-Castle 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.

34 Costs—  
damages of  
laying out or  
changing  
roads

The cost 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 inclose 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 inclose the road vacated or any part of it, shall have no effect, and such person shall not inclose 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.

35 of vacating  
roads

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.

36 of opening  
& making  
(6-10)

Sect. 6. 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.

37 Bridge  
between coun-  
ties or hun-  
dreds repair-  
ed  
(Levy Ct. 85)

Sect. 7. If any overseer of roads in any hundred of Kent or Sussex county or the commissioners of roads in any hundred of New-Castle 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 New-Castle county shall refuse or neglect to ob-

38 Suffering  
roads or brid-  
ges to be ob-  
structed or  
out of repair

penalty on  
overseer or  
commission-  
ers

- serve and execute any direction or instruction which the commissioners of roads in such hundreds 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 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.
- 39 exception
- 40 Obstruct- Sect. 8. 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.
- 41 abatement of nuisances
- 42 Fee
- 43 Powers of overseers to open ditches (19)
- to take materials (45)
- 44 obstructing them
- 45 appraisal (17)
- Sect. 9. 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 making, 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 misdemeanor 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 as 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.) ”

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 ; ——— 46 certificate  
 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 ——— Wit-  
 ness our hands the ——— day of ———, 18—. No certificate of the oath or affirmation more than shown by the preceding form need be made ; and if 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 indorse 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 47 notice of appraisement  
 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 New-Castle 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. 48 appraised value paid

This section shall not be construed to preclude an overseer from obtaining materials by purchase or agreement.

Sect. 10. 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 49 overseers of bridges, same powers  
 50 Private roads



same, as hereinbefore prescribed in respect to the jurisdiction for laying out, 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, hereinbefore 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.

51 width

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.

62 overseers

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. 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. 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 misdemeanor 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.

53 penalty for  
nuisances in  
private roads51 costs &  
damages

The costs of all proceedings for laying out, changing or vacating any private road and the damages 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 deposit 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.

(32)

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.

Sect. 11. 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.

55 Width of certain roads in Kent and Sussex

*Passed at Dover, February 10, 1829.*

## II.

AN ACT altering the mode of repairing and supporting the roads and bridges in the several hundreds of the county of New-Castle.

1803

Whereas the present mode of repairing the roads in the county of New-Castle is found not only to be ineffectual but highly oppressive to the people of the several hundreds, for remedy whereof,—

Section 1. The following persons be and they are hereby appointed commissioners of the roads in the several hundreds in the county aforesaid;

56 Commissioners

[Three persons are named for each hundred.]

Sect. 2. The people of the several hundreds in the county aforesaid, who are entitled to vote for assessor and inspector, shall on the fifteenth day of September next, when they choose assessor and inspector, choose one good and substantial freeholder to supply the place of the person first mentioned in this Act as commissioner of the roads in the respective hundreds, and on the fifteenth day of September then next ensuing one good and suitable freeholder to supply the place of the person named secondly in this Act as commissioner of the roads in their respective hundreds, and on the fifteenth day of September thereafter ensuing one other good and suitable freeholder to supply the place of the person last named in this Act as commissioner of their respective hundreds, and annually thereafter one good and suitable freeholder to supply the place of the person in each hundred, who shall have acted as commissioner of roads for and during the space of three years. And whenever a vacancy or vacancies may happen in any of the hundreds aforesaid, then the surviving commissioner or commissioners, as the case may be, shall within twenty days, after such vacancy or vacancies may happen, appoint one or more suitable freeholder or freeholders to supply such vacancy or vacancies.

57 Election of commissioners  
(73)

58 vacancies

Sect. 3. The said commissioners of the roads or a majority of them in each hundred respectively shall meet at some convenient place in their hundred, by them to be agreed on, in the month of April in every year and then and there ascertain, as soon as may be, the sum or sums of money necessary for building, supporting and repairing the bridges, causeways and roads in their hundreds respectively, that are not supported at the common expence of the county; and the sums so ascertained, the said commissioners of the roads shall make out and calculate the rate per centum on the duplicates of their respective hundreds, which shall have been approved by the Levy Court in the month of March in the same year.

59 Meetings of commissioners

(5—9)

60 road tax  
(81)

(78)

Sect. 4. The commissioners of roads in the respective hundreds at their first or some subsequent meeting shall appoint some fit

61 Collector  
(74)

62 his bond person within their hundred to be collector of the road-tax to be laid as aforesaid, who shall give bond and security for the faithful performance of his duty in the name of the said commissioners and their successors in double the sum ascertained as sufficient to repair and support the bridges and roads in the said hundreds for one year; and the said collector shall discharge himself of all monies which shall be in his hands in virtue of this Act by orders drawn on him by the said commissioners or any two of them in favor of the overseer to be appointed as is herein after directed, or any other person or persons.

[75]

63 on removal, &c. books, &c. delivered to—

[76]

And on the death, resignation or removal out of the hundred or from office of any collector appointed under this Act, the books and papers relative to his office shall be delivered over whole and undelivered to his successor, or in case no successor is appointed, to the commissioners of his hundred or one of them, together with the balance of money in his hands, if any.

64 Commissioners—  
directions to  
overseers  
(76—77)

Sect. 5. The commissioners of the roads in the several hundreds respectively shall before the first day of April in each and every year view and examine the roads in their respective hundreds and shall deliver to the several overseers thereof directions in writing describing the manner how, and the time when, the roads and bridges in their several districts (that are not to be supported by the county) shall be repaired and amended.

65 Overseers  
to settle with  
commissioners  
(81—83)

Sect. 7. The overseers respectively shall once in every six months render an account to and settle with the commissioners of the roads for the several hundreds respectively or any two of them of and for all their services, payments and expenditures for the use of the said hundred: and for the sums, which shall appear to be due to the said overseers respectively upon such settlement and for all other monies necessary for the purposes of this Act, the said hundred commissioners or any two of them are hereby empowered and directed to draw orders on the collector of their respective hundreds, which said orders with proper receipts thereupon shall be sufficient vouchers for the collectors of the several hundreds to obtain credits therefor upon the settlement of his or their accounts.

66 Allowance  
to commissioners

Sect. 8. Each of the said commissioners of the roads in the several hundreds aforesaid shall be allowed and shall receive for every day's attendance in the discharge of the duties required by this Act, the sum of one dollar and twenty-five cents and no more.

66 Proceedings of commissioners recorded

[78]

Sect. 10. The said commissioners of the roads in the several hundreds aforesaid shall keep fair records of their proceedings, to be entered in a book or books to be provided for that purpose, which they shall lay before the Levy Court yearly and every year on the first Tuesday of February.

67 Borrowing  
money

Sect. 12. The said commissioners of the roads in the several hundreds aforesaid, be and they are hereby authorized and empowered to anticipate the road tax for their respective hundreds, should it appear necessary and expedient so to do, by borrowing such sum or sums of money as they may think proper and necessary for the present year, provided that no more than legal interest be given for the same, in order that no inconvenience may result from delaying the repairs aforesaid, until the money arising from the road tax may come into their power.

Sect. 14. The said commissioners of the roads in the hundreds aforesaid shall provide at the expense of the respective hundreds all fit tools and implements, that may be necessary for the repairs of the roads and bridges aforesaid in their hundreds respectively; which tools and instruments so to be provided shall be delivered to the overseers aforesaid upon their giving to the said commissioners such security for their safe keeping and delivery to their successors or the commissioners, as shall be by the said commissioners approved of.

68 Commis-  
sioners to pro-  
vide imple-  
ments

to be deliver-  
ed to overseer  
on security

Sect. 15. The commissioners of the roads in the respective hundreds aforesaid are hereby authorized and empowered to let or farm out the several roads in their respective hundreds or any part or parts thereof for any term not exceeding two years, should they conceive it proper and expedient so to do.

69 Farming  
roads  
(70)

Sect. 16. Whenever the commissioners of the roads shall think proper to let or farm out any part or parts of the roads in their respective hundreds, such agreement shall be made under hand and seal of the said commissioners and the person or persons so taking or farming the said roads, under such penalties and restrictions, as shall insure a due and faithful performance of the duties enjoined by this Act.

70 Agreem't  
to farm

Sect. 17. Each of the commissioners of roads herein appointed or hereafter to be chosen shall, before he enters upon his duty, take the following oath or affirmation, which shall be administered by a Judge or Justice of the peace to wit:

71 oath of  
commission-  
ers

*I, A. B. do swear, (or solemnly, sincerely and truly declare and affirm,) that as a commissioner of the roads for the hundred of I will to the best of my skill and judgment execute the duties of a commissioner of the roads as aforesaid according to the directions and meaning of this Act.*

Sect. 18. If any commissioner or overseer to be appointed in conformity with this Act shall neglect or refuse to take upon himself the duties enjoined herein, then and in every such case such commissioners or overseer shall forfeit and pay to the commissioners serving in pursuance hereof the sum of twenty dollars to be recovered before any Justice of the Peace in the same manner, as other debts under twelve pounds are recoverable, and to be applied to the support of the roads and bridges in the respective hundreds of the county aforesaid.

72 Penalty on  
commissioner  
or overseer re-  
fusing to act  
(38-16)

Sect. 19. Any person or persons who are now or shall hereafter be appointed commissioners of the Levy Court shall be and he is hereby declared ineligible as a commissioner of the roads in any of the hundreds aforesaid for and during his continuance in the said office.

73 Levy Ct.  
commissioner  
ineligible

*Passed at Dover, January 28th, 1803.*

A SUPPLEMENT to an Act, entitled, "An Act altering the mode of repairing and supporting the roads and bridges in the several hundreds of the county of New-Castle." 1804

Section 5. In the month of April annually, the collector of the road-tax of the preceding year in every hundred of the county aforesaid shall appear at a place to be appointed by the commis-

74 Collectors  
to settle with  
commissioners

sioners of the respective hundreds with his books and vouchers, and shall lay before them a statement of his accounts, which shall be adjusted by the said commissioners, who shall allow him for his trouble for collecting and paying over the said tax a sufficient compensation not less than five nor more than ten per centum, on the net sum collected or accounted for.

75 Balance  
in his hands  
(62, 63)

Sect. 7. Whatever balance has been or may hereafter be found due upon settlement with any collector of the road taxes in the county aforesaid shall forthwith be paid over by the collector, who owes the same, to his successor in office; and if any collector neglects or refuses to pay over whatever sum or sums may remain in his hands as aforesaid, the commissioners of the roads in the hundred, for which he was appointed, shall cause a suit to be instituted against such delinquent collector in any court of record for the county aforesaid in the name of the said commissioners and their successors for the recovery of all and every sum or sums of money so refused or neglected to be paid over.

76 Overseers  
appointed

Sect. 8. The commissioners of the roads in the respective hundreds or any two of them shall hereafter in every year on or before the first day of April, appoint one or more fit person or persons in the several hundreds to be overseer or overseers of the public highways, roads and bridges in the several parts thereof for the ensuing year, by certificate under the hands and seals of said commissioners or any two of them; and the said overseer or overseers so to be appointed shall upon receiving such instructions, as the commissioners of the roads for the respective hundreds shall think proper to give them in writing for the repair and support of the roads and bridges, proceed to execute the duties required of them, and to employ laborers and workmen to repair and mend the public roads and bridges within the limits of their appointments respectively in the manner by the said commissioners directed.

*Passed at Dover, January 24, 1804.*

77 powers &  
duties  
(64)  
(43—49)  
(38—16)

1826

**A SUPPLEMENT** to the Act entitled "*An act altering the mode of repairing and supporting the roads and bridges in the several hundreds of the county of Newcastle.*"

78 Accounts of  
commiss'rs  
[81]

Section 1. It shall be the duty of the commissioners of the roads of the several hundreds in and for the county of Newcastle in the first week of the month of May in every year to make out four accurate copies or statements of their accounts during the preceding year; which statements shall exhibit the amount of the road tax levied in the said year in the hundred, the net proceeds of said tax, a list of the orders drawn by the said commissioners, the names of the persons in whose favor they were drawn, on what account they were drawn, and for what amount: two of which statements shall be hung up in the most public places in the hundred; one shall be transmitted to the Auditor of Accounts and the fourth shall be transmitted to the clerk of the peace of New-Castle county to be by him filed in his office; and the said statement shall be printed in two newspapers of the said county for the space of four weeks; and it shall be the duty of the Attorney General upon the neglect or refusal of the said commissioners respectively to comply with

79 posted—  
sent to Audi-  
tor—Clerk of  
Peace

& published

80 duty of  
Att'y General

the provisions of this section on or before the tenth day of May in the year in which the said statement is made out, to proceed against the commissioners so neglecting or refusing, at any subsequent term of the Court of General Quarter Sessions of the Peace in and for New-Castle county by indictment; and the commissioners so neglecting or refusing shall upon conviction thereof pay a fine of not less than fifty dollars nor more than two hundred dollars for each and every such neglect or refusal to be applied to the repair of roads and bridges in the hundred where such forfeiture may happen.

81 neglect of commissioners penalty

Sect. 2. The overseers appointed in the several hundreds by the said commissioners shall once in every six months render an account to and settle with the said commissioners or any two of them in the manner directed by the seventh section of the Act, to which this is a supplement; and upon the neglect or refusal of any such overseer to render such account, it shall be the duty of the Attorney General to proceed against him by indictment, and upon the conviction of the said overseer of such neglect or refusal he shall pay a fine of not less than fifty dollars nor more than one hundred dollars to be applied to the repair of roads and bridges in the hundred, where such forfeiture may happen.

82 Accounts of overseers (65—83)

neglect penalty

Sect. 3. No person being an overseer of roads in the said county shall be allowed or paid for work or labor done upon the public roads or bridges of the hundred, in which he shall act as overseer, by his own servants, laborers or teams in any one year more than ten dollars exclusive of his allowance as overseer aforesaid except as hereinafter excepted: nor shall any other person be employed to do any work or labor on the roads or bridges aforesaid, the allowance for which shall exceed ten dollars in any one year in any one hundred, unless the overseer of roads for such hundred shall make it appear to the satisfaction of the road commissioners of such hundred, that he could not procure other workmen, laborers or teams, under a penalty of twenty dollars to be recovered by indictment from the commissioners of roads consenting to and allowing such excess, to be applied to and for the use of the public roads and bridges in the hundred, where such forfeiture may occur.

83 Limitation of allowance to overseer for work done by him or any person

*Passed at Dover, February 6, 1826.*

**AN ACT** authorizing the commissioners of roads, in and for the hundred of New-Castle, to apply the dividends arising from certain stock, belonging to the hundred, to the purposes therein mentioned.

1820

It shall be lawful for the commissioners of roads in and for the hundred of New-Castle or a majority of them from time to time to draw the dividends now due, or which may grow due, on the stock of the New-Castle turnpike company or the stock of the New-Castle and Frenchtown turnpike company held by the commissioners of roads of said hundred in trust for said hundred and to apply such dividends from time to time in the repairs of the roads and bridges within the same or apply the same to the redemption of the stock of the New-Castle turnpike company.

84 Dividends on stock in N. Castle Turnpike Co.

*Passed at Dover, 11 February, 1820.*

## III.

1825

## AN ACT concerning the discharging of road taxes, in Sussex county, by work or materials.

- 85 Road Taxes in Sussex payable in work, materials, &c. (89-92) Section 1. To the end that every person liable to pay a road tax in Sussex county may have opportunity to discharge such tax by work and labor done or caused to be done, or by necessary materials provided for repairing or constructing roads or bridges; each overseer of roads in the several hundreds of the said county shall appoint the days and places for working upon the roads within his district or limits, and shall select from those liable to pay road taxes within his district or limits certain persons to work or to provide workmen or laborers or teams on every day so appointed, and shall at least two days before each day appointed give notice in writing to each person selected for that day; which notice shall require such person to work or to provide a workman or laborer upon the roads on the day appointed, and shall specify the hour and place of meeting on such day to begin work: and if any person shall be allowed or required to provide more than one workman or laborer or a team, the notice shall specify the number of workmen or laborers and the team, which such person will be required or allowed to provide; and at the end of the day the overseer shall give to each person so selected as aforesaid and working or providing labor a certificate under his hand setting forth in words at length the sum, which such person shall be entitled to be allowed in or toward the discharge of road tax, and the cause for such allowance, specifying the particulars; and if any workman or laborer shall not come to work in good season or shall not work faithfully through the day or the part of the day required, the overseer shall make such deduction from the usual allowance, as he shall consider just, and shall certify the fact and balance: and each overseer shall make so many and such appointments for working on the roads within his district or limits, as shall afford to every person liable to pay a road tax within said limits or district opportunity to discharge the same by work and labor before the fifteenth day of August in every year: but if any person, to whom notice shall be given as aforesaid, shall refuse or neglect to attend or to provide a laborer or workman pursuant to such notice, it shall not be incumbent on the overseer to afford to such person a second opportunity to discharge by work and labour the portion of the road tax, which would have been discharged if work and labour had been rendered in pursuance of such notice; and it shall not be the duty of an overseer to give notice to any person not residing within his district or limits; but every person liable to pay a road tax within a district or limits, wherein he shall not reside, shall apply to the overseer of roads within such district or limits for directions when and where to work within such district or limits in discharge of said tax; *Provided always*, that if materials shall be necessary for repairing or constructing roads or bridges within the district or limits of any overseer, he may call upon such persons liable to pay road taxes within his district or limits, as can in his opinion most conveniently furnish the same, for such materials to be furnished in
- 86 Overseer to require work
- 87 certificate for work done
- 88 deduction for unfaithful work
- 89 every person to have an opportunity (92)
- 90 neglecting to work as required
- 91 persons not residing in overseer's limits
- 92 materials for repairs, by whom to be furnished

discharge of such taxes, and shall give to each person furnishing materials in pursuance of such call a certificate under his hand, specifying the materials furnished, and setting forth in words at length the sum allowed therefor; and if any person, who shall be called upon for materials as aforesaid, shall refuse or neglect to furnish the same in pursuance of such call, the road tax of every such person shall be paid in money and not discharged by work and labor. And every certificate, which shall be given by any overseer in pursuance of this Act, shall avail and be received in discharge of a part or the whole (as the case may be) of the road tax, which the person, to whom the certificate shall be given, shall be liable to pay within the district or limits of the overseer giving the same; but in no case and on no account shall an overseer give a certificate as aforesaid to any person not liable to pay a road tax within his district or limits, or for greater amount than the road tax; and any certificate given by an overseer to a person not liable to pay a road tax within his district or limits, shall be absolutely void; and if a certificate shall be given to any person for a greater amount than the road tax, which such person shall be liable to pay within the district or limits of the overseer giving the same, it shall be void for the excess: and that no difficulty may arise in ascertaining within what district or limits any persons shall be liable to pay their road taxes, the Levy Court and Court of Appeal in Sussex county, when assigning to the overseers of roads their respective districts or limits, shall determine all and every the persons liable to pay road taxes within the district or limits of each overseer with their respective road taxes payable within every such district or limits, and shall cause to be made in pursuance of such determination, and certified by the clerk of the peace under his hand and seal of office, two lists of the persons liable to pay road taxes within the district or limits of each overseer with their respective road taxes within the said district or limits set down against them respectively; which lists shall duly set forth the name of the overseer, to whose district or limits the same shall appertain, and the hundred wherein the same district shall be; which determination shall be absolutely decisive and final; and the lists made as aforesaid shall be conclusive to all intents and purposes and shall not be liable to be contradicted or called in question; and one of the said lists shall be retained by the said clerk upon the files of the said court, and the other shall be delivered to the overseer, to whose district or limits it shall appertain, together with his warrant; and the overseer shall deliver the said list, truly and accurately noting thereon the taxes or parts of taxes discharged by certificate or certificates by him given, on or before the fifteenth day of August of his year, to the collector of his hundred, who shall return the said list to the Levy Court when settling his accounts; and every overseer shall keep a true and accurate account of every certificate, which he shall give, stating the date, items and amount of such certificate, and render the same with such other accounts, as the Levy Court and Court of Appeal may prescribe, to that court; and every account rendered by an overseer shall be upon his oath or affirmation, according to the following form, viz.: *I A. B. do solemnly swear (or affirm) that all the*

93 neglect to furnish them

94 certificates in payment of road taxes

95 not to exceed road tax

96 Levy Ct. to make lists of persons liable to pay road taxes in every district and the am't of such tax

97 overseer's account

on oath



*work and labor in this account stated was truly performed, that all the materials in the same mentioned were truly provided and that the said account, in all and every the items thereof is just and true; so help me God (or so I solemnly affirm;)* which oath or affirmation any Judge of the State or any Justice of the Peace for Sussex county or any commissioner of the Levy Court and Court of Appeal for said county is hereby authorized to administer.

98 Oath of  
office of over-  
seers

Sect. 2. Every overseer of roads in Sussex county shall, before entering upon the duties of his office, take an oath or affirmation before some Judge of the State or Justice of the Peace for said county, or commissioner of the Levy Court and Court of Appeal for said county, according to the following form, viz. *I, A. B. do solemnly swear (or affirm,) that in requiring work and labor upon the roads or materials for repairing or constructing roads or bridges, I will conduct myself with fairness and impartiality, without favor or prejudice to any person; that I will not give a certificate for work and labor or materials, except the same shall have been faithfully and truly performed or provided according to the form of such certificate; and that I will perform the duties of my office with diligence and fidelity; so help me God (or so I solemnly affirm.)*

99 Fraudu-  
lent certi-  
cate  
penalty

Sect. 3. If any overseer of roads in any hundred in Sussex county shall collude with any person for the purpose of discharging his or her road tax by means of a certificate, or shall give to any person any false or fraudulent certificate, every such overseer shall for every such offence upon indictment and conviction in the Court of General Quarter Sessions of the Peace and Gaol Delivery within Sussex county forfeit and pay a fine not less than five, nor more than fifty dollars; which shall be appropriated to the maintenance of the roads and bridges in said county and for that purpose paid to the County Treasurer, and shall also pay the costs of prosecution,

100 Levy Ct  
to make rules  
for overseers

Sect. 4. The Levy Court and Court of Appeal in Sussex county shall have power and they are hereby authorized to make, from time to time, such rules and ordinances, as they may deem expedient, for the regulation and government of the overseers of roads in said county, in prescribing the number of workmen and laborers that maybe employed on any day, in regulating wages, in directing the form of accounts and the items which the same shall contain, and in ordering the manner of performing the duties of the office; and such rules and ordinances shall be obligatory and imperative upon the overseers, provided the same shall not be repugnant to or inconsistent with the constitution or laws of this State or of the United States.

101 Road  
taxes paid in  
money

Sect. 5. Any road tax or any balance of a road tax which on the fifteenth day of August in each year shall not have been discharged by work and labor or materials according to certificates duly granted, shall be payable in money and collected and levied by the collector.

*Passed at Dover, January 28, 1825.*

# SABBATH.

485

AN ACT more effectually to prevent the profanation of the Lord's day commonly called Sunday.

1795

Whereas the penalties, which have heretofore been inflicted upon those who profane the Lord's day commonly called Sunday, have been found insufficient to deter many persons from such immorality; therefore,

Profaning Sabbath by—

Section 1. If any person or persons within this State after the passing of this Act shall do or perform any worldly employment, labor or business whatsoever upon the Lord's day commonly called Sunday (works of necessity and charity only excepted) and be duly convicted thereof by his or her own confession or the testimony of one or more credible witnesses before any one Justice of the Peace, or by the view of such Justice, such person or persons so offending, for every such offence, shall forfeit the sum of four dollars; and upon refusal or inability to pay the said fine and the legal costs, he or she shall be imprisoned in the public gaol of the county, where the offence shall be committed, for any space of time not exceeding twenty-four hours.

1 worldly employment, &c

Sect. 2. If any carrier, pedler, waggoner or any driver of a travelling stage, wagon or coachee; carter, butcher or drover, with his horse, pack, wagon, stage, coachee, cart or drove, shall travel or drive upon the Lord's day, or if any person or persons within this State shall expose any goods, wares or merchandises to sale on the said day, and shall thereof be duly convicted in manner aforesaid; the person or persons so offending shall, for every such offence, forfeit and pay the sum of eight dollars, shall be stopped and detained with his horse, pack, stage, coachee, wagon, cart or drove until the succeeding day, and upon refusal or inability to pay the said fine and legal costs, shall be imprisoned in the public gaol of the county, where the offence shall be committed, for any space of time not exceeding two days.

2 pedlers, stage drivers, drovers, &c. travelling

Sect. 3. If any person shall be duly convicted in manner aforesaid of fishing, fowling, horse-racing, cock-fighting or hunting of game upon the said day, the person so offending, for every such offence, shall forfeit and pay the sum of four dollars, and upon refusal or inability to pay the said fine and the legal costs, shall be imprisoned in the public gaol of the county, in which the offence shall be committed, for any space of time not exceeding twenty-four hours.

3 fishing, fowling, horse-racing, &c.

Sect. 4. If any number of persons shall assemble to game, play, or dance on the said day, and shall then engage or assist in such game, play, or dance, every person so offending, being duly convicted in manner aforesaid, shall forfeit the sum of four dollars, and upon refusal or inability to pay the same and the legal costs, shall be imprisoned in the public gaol of the county, where such offence shall be committed, for any space of time not exceeding twenty-four hours.

4 gaming or dancing

Sect. 5. All the fines and forfeitures and the legal costs thereon, mentioned in this Act, shall be levied by distress and sale of the offender's goods and chattels respectively by warrant under the hand and seal of such Justice, before whom the conviction shall be made, the same shall be applied to the use of the poor of the coun-

5 how fine recovered an applied

ty, where the offence shall be committed; any law, usage, or custom to the contrary in any wise notwithstanding.

*Passed, February 6, 1795.*

—o—  
SALARIES.

1793 *AN ACT for ascertaining the salaries of the Governor, the Chancellor, the Judges, and the Secretary, and for making allowances to the members of the General Assembly, and for other purposes.*

1 Salaries—  
of Governor  
Chancellor  
a \$1000 [6]  
Judges

Section. 1. There shall be allowed to the Governor the annual salary of one thousand three hundred and thirty-three dollars and one third of a dollar, to the Chancellor the annual salary of [eight hundred (a)] dollars, to the Chief Justice of the Supreme Court and to the Chief Justice of the Court of Common Pleas the annual salary of one thousand dollars each, to each of the other Justices of the Supreme Court and the Court of Common Pleas, five hundred dollars, to the Secretary the annual salary of four hundred dollars.

& Secret'y

2 Quarterly  
payments

Sect. 2. The above salaries shall be paid at the treasury of this State, in quarterly payments.

3 Orders of  
Speakers  
(General As-  
sembly-5)

Sect. 3. The allowances to the members of the General Assembly, the door-keepers, and all contingent expenses necessary for the accommodation of the two houses, shall be paid at the treasury of this State, on warrants drawn by the Speakers of each house respectively.

4 No fees, &c  
to Governor,  
Chancellor or  
Judges

Sect. 4. No fees, perquisites or daily expenses or travelling charges shall be paid or allowed to the Governor, from and after the passing of this Act; nor to the Chancellor and Judges from and after the first day of October next, other than the salaries aforesaid; except such fees, as shall be allowed to the Chancellor and Judges for services done out of court; any law to the contrary notwithstanding.

Exception

*Passed, February 2, 1793.*

1798 *AN ACT for allowing a compensation to the Attorney General.*

5 Att'y, Gen'l

The Attorney General shall receive for his services, exclusively and independently of the fees arising upon all criminal prosecutions, the sum of three hundred and fifty dollars annually to be paid at the treasury of this State; any law, usage or custom to the contrary in any wise notwithstanding.

*Passed, January 24, 1798.*

1806

*AN ACT to increase the salary of the Chancellor, [and the daily allowance of grand and petit jurors, and for other purposes.]*

6 Chancellor

Section 1. That in lieu of the salary heretofore allowed by law, the annual sum of one thousand dollars be and hereby is granted

to the Chancellor, which shall commence from the twenty-first day of March next, and be paid quarterly at the treasury of this State.

*Passed at Dover, February 1, 1806.*

—o—

## SATISFACTION OF JUDGMENTS AND RECOGNIZANCES.

AN ACT directing the entry of satisfaction of judgments, decrees and recognizances and of payments on executions. 1829

Section 1. 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 recognizers in such recognizance, or the executors or administrators of such person or recognizer 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 alleged in the declaration and proved, that special damages have been sustained to a greater value. <sup>1 Entry of satisfaction (4)</sup> within 60 days <sup>2 penalty for neglect</sup>

Such satisfaction shall be entered by the clerk or prothonotary upon the application of the party or his attorney, who must sign the entry. <sup>3 How entered</sup>

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. <sup>4 Justices judgments— & judgments— satisfied on execution</sup>

Sect. 2. 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 the execution, 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 the hand of the sheriff or other officer, and it shall be indorsed 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 <sup>5 Execution satisfied, or part paid—fact to be returned</sup> <sup>6 receipt after return— certified to Clerk</sup> <sup>7 entered</sup> <sup>8 penalty on sheriff or Clk for neglect</sup>

## SCHOOLS.

fifty dollars, unless it is alleged in the declaration and proved, that special damages have been sustained to a greater value.

This section shall not extend to an execution issued by a Justice of the Peace.

*Passed at Dover, February 7, 1829.*

## SCHOOLS.

## I.

1821 AN ACT for the encouragement and support of schools in this State.

1 Sunday  
Schools  
(6)

2 allowance  
(3)

3 return of  
scholars

4 sum for  
each

5 limit

6 qualificat'n

Section 1. Every school or schools instituted in this State for the education of children on the Sabbath day shall, upon sufficient proof being made of the due organization of such school, be entitled to receive a certain sum annually to be paid by the treasurer of the county, in which such school may be established, in such manner, as shall be hereinafter directed.

Sect. 2. Upon a return being made by the teacher or teachers of any such Sabbath schools to the commissioners of the Levy Court of the county, stating the number of scholars in such school, and certified by two respectable freeholders of the neighborhood, the said commissioners are hereby authorized and directed to draw an order on the County Treasurer annually for a sum of money not exceeding the rate of twenty cents per annum for each white scholar so returned; which order shall be paid by the County Treasurer to the said teacher or manager of the said school, and shall be raised as other county rates and levies are by the laws of this State: *provided*, that the sum annually drawn for upon the Treasurer of each county under and by virtue of the provisions of this Act shall not exceed two hundred dollars: *And provided further*, that no school shall be entitled to receive any aid under this Act, unless such school shall have continued three months in each year, which fact must be stated and certified in the manner above mentioned.

*Passed at Dover, 3 February, 1821.*

## II.

1829

AN ACT for the establishment of free schools.

7 School di-  
stricts

8 rule of di-  
vision  
(State Treas-  
urer, &c. 11)

Section 1. 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 that distance from the center; 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.

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 besworn 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.

9 Commis-  
sioners, ap-  
pointed

10 their oath

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.

11 duties

12 duty of  
Cl'k of Peace  
Trustee of  
School fund

The commissioners of 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 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 of 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.

13 Commis-  
sioners to  
meet & form  
board

14 return

15 duty of  
Cl'k of Peace

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.

16 Levy Ct.  
to correct re-  
turn

17 transcript  
of corrected  
return

recorded

& published

18 duty of  
Cl'k of Peace  
& Trustee of  
School fund

19 Levy Ct.  
may alter  
School di-  
stricts

20 Annual  
meeting of  
School voters

21 who are  
School voters

22 chairman  
& secretary

23 officers  
elected

24 meeting  
may adjourn

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 transcript. 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.

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 conveniences and inconveniences 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.

The proceedings of the said court touching any of the premises shall not be drawn in question elsewhere.

Sert. 2. 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 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.

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, men-

tioning 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, although 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.

25 Notice of meeting by Clk or commissioner of district

26 penalty for neglect to give notice

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 inquire 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.

27 occasional meetings

28 place of

29 business

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.

30 Proceedings of meeting certified

31 false certificate

If any person not being a school-voter of a district shall vote at a stated or occasional meeting of the school-voters of such district,

32 Penalty for illegal voting



he shall be deemed guilty of a misdemeanor, and on conviction shall pay to the State a fine of fifteen dollars.

33 Districts  
not organized  
in time—  
how meet-  
ing called  
afterward

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 hereinbefore prescribed with respect to the stated meeting in October next, and he shall incur the like penalty for failure.

34 School  
committee

(41)

sworn

Sect. 3. 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:

35 powers &  
duties  
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 center 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 of 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.

teachers

36 qualifica-  
tions of teach-  
ers

37 female  
teachers

39 applicat'n  
of money

39 Collector  
(10)

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.

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 deem 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.

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.

5. To appoint a collector of the district and take from him se-

curity 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 on or before the first Monday of January in each and every year to 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.

6. To do all acts requisite for effecting the premises.

The bond of the collector may be according to this form:

*Know all men by these presents, That we \_\_\_\_\_ are firmly bound jointly and severally to school district No. \_\_\_\_\_ in \_\_\_\_\_ county in the sum of \_\_\_\_\_ to be paid to the said school-district. Sealed with our seals. Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_*

general  
powers  
40 Collector's  
bond

*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 effect- 41 Majority  
tual, as if done by them all.

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. 42 Clerk of district, his duty

Sect. 4. 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 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. 43 Income of School fund divided among districts (44)

44 Mode of distribution

45 Trustee of said fund—his duty

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 preceding 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 increase the amount to be divided among said districts. A school-district can be entitled to no more than shall be placed to its credit in the account duly kept as aforesaid. The said Trustees shall certify the substance of each order and the sum paid thereon to the Auditor.
- 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 shown 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 Auditor's 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 en-
- 46 Orders by school committee  
47 Necessary vouchers  
48 sum  
49 accounts  
50 Orders & certified to Auditor  
51 Accounts of School committees settled by Auditor  
52 his duty herein (55)  
53 forfeiture by a district

uing 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 appears 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 do not continue in the district or be of the committee, to two other inhabitants of the district.

64 liability of school committee

55 Auditor's duty

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.

56 Account of school committee in meeting of school voters

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.

57 Penalty for fraudulent certificate to draw money from the school fund

Sect. 5. 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.

58 when schools opened, &c.

59 free

Sect. 6. 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.

60 allowance to school committee

Sect. 7. Each school district shall be a corporation by the name of *School-district No. — in — county*; 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 fran-

61 School districts incorporated

62 corporate powers

(Justices of  
Peace IX.)  
page 330

63 Superin-  
tendent

chise. 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.

Sect. 8. The Governor in the present year and yearly hereafter before the first Monday of March shall appoint a superintendent of free schools in each county. It shall be the duty of the superintendent 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.

64 Pay of  
commissio-  
ners  
65 Pay of  
Clk of Peace

Sect. 9. 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.

66 gen'l issue

Sect. 10. This Act and any matter of justification under it may be given in evidence under the general issue.

*Passed at Dover, February 12, 1829.*

—o—

## SEALS OF OFFICE.

1786

*AN ACT for devising and establishing seals to be made use of by divers officers in the respective counties of this State.*

1 Seals of of-  
fice (3, 5)  
(Courts 47)  
(Secretary of  
State 7, 6, 6)

Section 2. The respective officers within this State, to whom any fee is allowed for affixing the seal of their said office to any writing, (the Great Seal of the State excepted) shall within four months after the publication of this Act procure a seal of silver, steel or copper to be made of the diameter of one inch at the least, and cause the same to be engraven with the arms of the Delaware State or parts of the same, or such other device instead thereof, as the Justices of the court, of which they are clerks or officers shall order and direct and a motto or inscription to describe the office to which such seal belongs; which said seals shall be thenceforth taken, adjudged and deemed the seals of the said offices respectively, and may and shall be made use of and affixed to all writings and copies, to which a seal of office ought to be affixed.

2 delivered to  
& costs reim-  
bursed by  
successors

Sect. 3. The said officers, their executors or administrators shall deliver the said seals to their successors in the said offices respectively from time to time whole and undefaced (common wear

excepted) under the penalty of twenty pounds to be recovered by the person, who shall hereafter be lawfully appointed to hold the said office, by an action of debt, wherein no essoin, protection or wager of law or more than one imparlance shall be allowed; and the successor or successors in the said offices shall upon the delivery of the said seals in manner aforesaid reimburse and pay to the former officer, his executors or administrators the sum the said seals originally cost.

*Passed February 2, 1786.*

**AN ACT** for devising and establishing a seal to be used by the clerk of the High Court of Errors and Appeals. 1808

Section 1. The Clerk of the High Court of Errors and Appeals shall within four months after the publication of this Act procure a seal of silver, steel or copper to be made of the diameter of one inch at the least, and cause the same to be engraven with the arms of the State of Delaware, or such other device instead thereof, as the Chancellor of this State shall order and direct and a motto or inscription to describe the office to which such seal belongs; which seal shall be thenceforth taken, adjudged and deemed the seal of the said court, and may and shall be made use of and affixed to all writings and copies to which a seal of office ought to be affixed. 3 Of High Ct. of Errors and Appeals

Sect. 2. The said clerk of the High Court of Errors and Appeals, his executors or administrators shall deliver the said seal to his successor in the said office from time to time whole and undefaced (common wear excepted) under the penalty of sixty dollars to be recovered by the person who shall hereafter be lawfully appointed to hold the said office, by action of debt, wherein not more than one imparlance shall be allowed; and the successor or successors in the said office shall upon the delivery of the said seal in manner aforesaid re-imburse and pay to the former officer, his executors or administrators the sum the said seal originally cost; which said original cost shall be by order of the Chancellor entered among the records of said court at the next term. 4 delivered to & costs reimbursed by successors

*Passed at Dover, January 26, 1808.*

**AN ACT** for devising and establishing a seal to be used by the Auditor of accounts of this State, and for other purposes. 1810

The Auditor of accounts of this State shall within four months after the publication of this Act procure a seal of silver, steel or copper to be made of the diameter of one inch at the least, and cause the same to be engraven with the arms of the State of Delaware, or such other device instead thereof, as he may direct, and a motto or inscription to describe the office to which such seal belongs; which seal shall be thenceforth taken, adjudged and deemed the seal of the office of the Auditor of accounts of this State, and may and shall be made use of and affixed to all writings and copies to which a seal of office may or ought to be affixed. 5 Auditor's office (Auditor of accounts 42)

*Passed January 29, 1810.*

## I.

1793 AN ACT to enjoin certain duties to be performed by the Secretary of State, and for other purposes.

- 1 Books, &c. of his office open to committees      Section 7. The books, papers and accounts of the Secretary shall be open to the inspection and examinations of committees of the Senate or House of Representatives; and he shall furnish any such committee with copies or extracts therefrom, as may from time to time be required.
- 2 His bond      Sect. 8. The Secretary shall give bond to the Governor for the use of the State, for the due and faithful discharge and performance of the several trusts to him committed, himself in the sum of two thousand dollars and two sufficient sureties in the sum of one thousand dollars each; which bonds shall be duly recorded in the Recorder's Office in the county where the Governor shall reside; and copies thereof shall be admitted as evidence, as copies of other public records in the same office are.
- 3 Great Seal (5)      Sect. 9. The seal heretofore used as the Great Seal shall be and is hereby declared to be the Great Seal of the State.
- 4 Secretary to keep said Seal      Sect. 10. The Secretary shall keep the said seal, and shall make out and record, and shall affix the said seal to all commissions, to instruments to which the Governor's signature is by law required, and to certificates for the authentication of instruments to be sent out of the State; provided that the said seal shall not be affixed to any commissions or any instruments to which the Governor's signature is by law required, before the same shall have been signed by the Governor.
- 5 New Great Seal      Sect. 11. The Secretary shall cause a Great Seal to be made of such device, as the Governor shall approve, which shall hereafter be used for the same purpose for which the said seal herein first mentioned is directed to be used; and when such new Great Seal shall be made, the seal first mentioned as aforesaid shall be broken and be no longer used as a seal.
- 6 Seal of office      Sect. 12. The Secretary shall cause a seal of office to be made of such device as the Governor shall approve; and all copies of records and papers in the said office authenticated under the said seal shall be evidence equally with the original records or papers.
- 7 Other public seals (Seals of office 1)      Sect. 13. The Clerks of the Supreme Court, Prothonotaries, Registers, Recorders and Clerks of the Orphans Court shall, if their present seals of office be in the opinion of the Governor not conformable to the late change of the constitution of this State, forthwith cause seals of their respective offices to be made of devices, as shall by the Governor be approved.
- 8 Powers vested in the Governor      Sect. 14. All the powers formerly vested in the President alone or in the President and Privy Council jointly under the late constitution and by the laws of this State, not provided for by the constitution, shall from and after the passing of this Act be vested in the Governor; but all licenses of marriage, and other licenses shall be countersigned by the Secretary and sealed with the seal of his office.
- 9 marriage licenses

Passed February 2, 1793.

II.

**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.

1829

Section 1. 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. 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.

10 Records of executive department, and Acts of Assembly

11 Printing of Acts of Assembly, &c.

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.

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.

12 Distribution (15)

13 binding in volumes

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.

14 Interchange with other States

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 re-

15 Laws sent to Protho'y how disposed of



ceive 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.

16 Journals  
of Senate  
& H. of Rep.

Sect. 2. The journal of the Senate and the journal of the 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.

17 Clerks to  
advertise for  
proposals for  
printing, &c.

18 certificate  
and order

19 limitation  
of sum

20 distribut'n

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.

21 copies in  
Secretary's  
office, bound

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.

*Passed at Dover, January 27, 1829.*

### III.

1821

**A SUPPLEMENT** to an Act entitled "*An Act enjoining certain duties on the Secretary of State, and other officers therein mentioned.*"

22 Report to  
State Treas.  
of fines remit-  
ted

Section 1. The Secretary of State is hereby required and directed, annually by the first Monday of December in each and every year hereafter, to report to the State Treasurer the fines and forfeitures which the Governor may have remitted during such year.

*Passed at Dover, 29 Jan. 1821.*

**A FURTHER SUPPLEMENT** to the Act, entitled, *An Act for the better regulation of servants and slaves within this government.*

1760

Whereas the children of white women by negro or mulatto fathers, and the descendants of such children and negroes, entitled to their freedom, are frequently held and detained as servants or as slaves by persons pretending to be their masters and mistresses, when they ought not by the laws of this government to be so held, and detained and frequently are sold as slaves by such pretended masters or mistresses to persons, who reside in other governments, with a fraudulent design to prevent their procuring proof of their being entitled to their freedom; and whereas the laws of this government are defective in not prescribing any mode for settling and determining in a short and summary manner the claim or right of any persons pretending to be entitled to their liberty;

Section 2. The Justices of the respective County Courts of Common Pleas within this government, upon any petition to them to be preferred by any person or his or her parent or friend, setting forth that such person is kept, held or detained as a servant or slave by his or her pretended master or mistress, masters or mistresses, and that such person apprehends, that he or she is entitled to his or her freedom, shall issue a summons against such master or mistress, masters or mistresses, commanding him, her or them to come before the said Justices at a certain day therein to be appointed, to answer the said complaint, and to issue subpoenas to the sheriff of the county directed, for summoning and bringing any person or persons before them at the said day to give evidence in and upon the matters in such petition contained, under such pains and penalties, as by the rules and practice of the said court in other cases are usually appointed: and after hearing the proofs and allegations of the parties in a summary way, it shall and may be lawful to and for the said Justices, if they are satisfied that the person, so petitioning or on whose behalf such petition shall be presented, is entitled to his or her freedom, to discharge such person from the service of his or her pretended master or mistress, masters or mistresses, and to adjudge and decree, that such person is and shall be free and at liberty, and shall and may enjoy all the benefits and advantages that a free negro or free mulatto may or can do within this government: And if the pretended master or mistress, masters or mistresses of any person so petitioning, being summoned as aforesaid, shall not appear, it shall and may be lawful for the said Justices to proceed as aforesaid in his, her or their absence, on hearing the proofs and allegations on the part of the said petitioner only.

1 Petition for freedom

2 Judgment  
Appeal (Negroes, &c 11)  
(Negroes, &c. 3)

Sect. 3. After the judgment or decree given in any such case as aforesaid, the Justices of the court, that gives the same, shall thereupon grant an execution directed to the sheriff of the county, commanding him to take the person so discharged from the custody of his or her pretended master or mistress, and to set such person at liberty; and in case such person shall be concealed or detained by such pretended master or mistress, so that the sheriff cannot find such person, in order to set him or her at liberty, then

3 Execution

upon return being made thereof to the said Justices and proof thereof made to their satisfaction, they shall immediately issue a precept to the said sheriff, commanding him to attach and seize such pretended master or mistress and him or her in safe and close custody keep, until the person, so discharged by the court, and concealed or detained as aforesaid, shall be produced in the said court by such pretended master or mistress; And in case the said sheriff shall not keep such pretended master or mistress in safe and close custody as aforesaid, such sheriff for such default shall be liable to pay one hundred pounds lawful money of this government to the party aggrieved to be recovered by him or her, in an action of debt to be brought by the said party against the said sheriff, his executors or administrators in any court of record within this government; in which action or in any other action or proceeding, this law shall be construed, deemed, taken and allowed as and for a public Act of Assembly, though the same be not pleaded; and the Justices of the said court shall accordingly take notice thereof as such.

4 Action for  
false imprisonment

Sect. 4. Any person so freed and discharged shall and may thereupon bring and maintain an action of trespass and false imprisonment or any other action in the law, that may be proper in such case, against such pretended master or mistress for unlawfully holding and detaining such person as aforesaid before or after his or her discharge, and the judgment or decree, by which such person shall be discharged as aforesaid, shall be admitted and allowed in every court of record within this government as good proof and sufficient evidence, that such person is entitled to his or her liberty.

5 Costs

Sect. 7. All costs accruing or to accrue for or by reason of any action or proceeding by virtue of this law, shall be paid and defrayed by the master or mistress of any person applying or suing as aforesaid, to be levied of the goods and chattels of such master or mistress on an execution to be issued against him or her, to the sheriff of the said county directed, by the Justices, who give any decree or judgment as aforesaid; and in case such master or mistress has not goods and chattels sufficient to pay the said costs, then the person of such master or mistress shall be taken in execution by the said sheriff, and he or she shall remain in the said sheriff's custody, until the same be paid.

*Passed October—1760.*

## SHERIFF.

### I.

1827

### AN ACT concerning the office of sheriff.

(Constit. 91)  
(Public bonds  
& recognizances  
1, 7).

Section 1. 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.

(Prisoners & Gaol 2)  
1 Under-Sheriff ineligible  
2 Promoting election by bribery, treating, &c.  
(Gen'l Election 84)

Sect. 2. 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, 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 misdemeanor, and upon conviction thereof shall forfeit and pay to the State a fine not exceeding the sum of one hundred dollars.

penalty

*Passed at Dover, January 23, 1827.*

II.

AN ACT to regulate the courts in this State.

1793

Section 11. The sheriff of Kent county for the time being shall be attendant on the High Court of Errors and Appeals during the sitting thereof, and be the officer for the purpose of executing the orders and process of the said court, and in case of neglect or refusal so to do, shall be liable to the like pain, penalty, or forfeiture, as he is in the Court of Chancery, Supreme Court or Court of Common Pleas.

Sheriff of Kent to attend H. C. of Errors & App. (Fees 34, 35)

*Passed June 14, 1793.*

SLAVES.

I.

AN ACT for granting power to the courts to grant licenses respecting slaves in certain cases.

1829  
(Servants & Slaves)

Section 1. 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 prothonotary under his 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.

1 Licenses to export or import to, and from Maryland (Crimes, &c. 146)

Sect. 2. 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

2 Tax \$10 for slave imported

\$5 for slave exported 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.

*Passed at Dover, February 4, 1829.*

## II.

1822 AN ACT declaratory of the law respecting slaves in certain cases.

3 Farms divided by State line (Crimes, &c. 146) *Be it enacted and declared by the Senate and House of Representatives of the State of Delaware in General Assembly met. That any person, who shall occupy a farm or tract of land through which the line of this State may pass, of right may cause his or her slave to labor on the said farm or tract of land on either side of the said State line, without incurring any forfeiture; nor doth such slave by reason thereof become entitled to his or her freedom.*

*Passed at Dover, 4 February, 1822.*

## STATE ASSESSMENT.

1816 AN ACT authorizing and directing a general assessment of the real and personal property of this State.

1 Gen'l Assessment [Levy Court 98—117] page 386 [3]

Section 1. All the real and personal property within this State liable to assessment and valuation according to the provisions of the Act of Assembly entitled "An Act for the valuation of real and personal property within this State" passed on the ninth day of February, one thousand seven hundred and ninety-six, and the several supplements thereto shall be assessed and valued by William Cooch of New-Castle county esquire, Andrew Barratt of Kent county esquire, and William Wolfe of Sussex county esquire, or by a majority of them acting together.

2 Manner of assessment

Sect. 2. The said William Cooch, Andrew Barratt and William Wolfe commissioners appointed for the purpose aforesaid or a majority of them shall make the assessment and valuation aforesaid on the principles and according to the provisions of the aforesaid Act of Assembly of the ninth of February, one thousand seven hundred and ninety-six and the several supplements thereto, so far as the same are not varied or departed from by any of the provisions of this Act; *Provided nevertheless*, That every freeman above the age of twenty-one years, whether he has or has not property assessed to him, shall be rated a personal tax for a capital not less than one hundred dollars nor exceeding five thousand dollars at the discretion of the said commissioners.

3 personal tax

1 Oath

Sect. 4. The said commissioners, before they enter upon the duties assigned them by this Act, shall severally taken an oath or affirmation before some Judge of this State, that they will diligently, faithfully and impartially to the best of their skill and judgment

execute the duties assigned them by this Act, and that they will spare no person for favor, affection or partiality, or grieve any one for hatred or ill-will, but that they will do equal right and justice according to the best of their knowledge in every case, in which they act as commissioners aforesaid.

Sect. 5. If any vacancy or vacancies should happen in consequence of the death, refusal or inability to serve of any or either of the commissioners aforesaid, then and in such case the Governor shall immediately thereafter appoint for the proper county a good and discreet freeholder or freeholders to supply such vacancy or vacancies; and the person or persons thus appointed shall have the same powers and authorities and proceed in the same manner, as if he or they were particularly named in this Act. And whenever any vacancy shall happen in the said board of commissioners, the same shall be supplied by the Governor in manner aforesaid; and every commissioner thus appointed by the Governor shall have the same powers, as if he had been named in this Act as such. 5 Vacancies

Sect. 7. As soon as the board of assessors shall have finished and completed their assessments in New-Castle county, they shall proceed to make out or cause to be made out lists in alphabetical order of all the taxables in each hundred together with the amount of the assessment of each person distinctly stated in a book to be had for that purpose, and shall have the same hung up at the places, where the hundred elections for the several hundreds are respectively directed to be held by law; and the same proceedings shall be had as aforesaid in each of the counties of this State, as the same may be severally assessed according to the provisions of this Act. 6 Lists hung up

Sect. 8. That Caleb Kirk for the county of New-Castle, John Raymond for the county of Kent, and Nathan Vickers for the county of Sussex be and they are hereby appointed and constituted a board of appeals, whose duty it shall be to meet for the county of New-Castle at the Court House in the said county at any time which shall not be less than twenty days after the list of taxables and amount of assessments shall have been hung up and exhibited in the several hundreds as aforesaid, due public notice of which meeting shall by the said board of appeals be given; when and where so met, they or a majority of them so met shall continue for a period not less than ten days, and during that time shall hear and determine upon all and every appeal made by any person or persons, who may consider him, her or themselves aggrieved by any assessment, which shall have been made in pursuance of this Act, and shall have power generally to arrange the several valuations and assessments, so that no person or persons may be unequally assessed or overrated in the assessment of his, her or their real or personal property within said county, and shall in like manner for the counties of Kent and Sussex meet and continue at the Court Houses of said counties respectively for the same time and purposes aforesaid, and shall in like manner give notice of such meetings, and shall in like manner hear, determine and arrange as hereinbefore prescribed and directed. 7 Board of appeals  
8 meeting  
9 in Newcas  
the  
10 powers & duties  
11 Kent and Sussex

Sect. 9. Each member of the aforesaid board of appeals re- 12 Oath

13 vacancies

spectively shall before entering upon the duties assigned them by this Act take the same oath to be administered in like manner, as directed to be taken and administered to the assessors herein before appointed; and the said board of appeals shall have the same power to appoint clerks, obtain information touching the value of real and personal property within the respective counties of this State; and any vacancies happening in the board of appeals shall be filled up and supplied as is directed by the fifth section of this Act for supplying vacancies in the board of assessors.

14 Copy of  
assessment  
delivered to  
board of ap-  
peals

Sect. 10. The board of assessors herein before appointed shall, as soon as they shall have finished and completed the valuation and assessment of each of the counties of this State respectively, in addition to the copy of their assessments and valuation hung up and exhibited in the hundreds respectively, as before directed, make out or cause to be made out one other fair copy of their said assessments and valuations, and deliver the same to the board of appeals before the sitting of the board in each county respectively, retaining the original lists in their own possession.

15 Meeting  
of assessors &  
board of ap-  
peals

Sect. 11. When and as soon as the aforesaid board of assessors and the said board of appeals shall have finished and completed their valuation and equalization of the real and personal property within the several counties of this State, they shall assemble together in the town of Dover, and as a joint board when so assembled or a majority of them when assembled shall proceed to compare their respective proceedings had in pursuance of this Act, and may or a majority of them together agreeing make such alterations in their assessments, valuations and equalizations as they or a majority of them may upon a full and fair examination deem right and proper; and a fair copy of such valuation when so as aforesaid adjusted, settled and determined shall be laid before the General Assembly at their next session thereafter.

16 powers &  
duties

*Passed at Dover, February, 1816.*

1817

*AN ACT making provision for the support of government for the year of our Lord one thousand eight hundred and seventeen.*

17 State taxes  
of 1816-1817,  
&c to be ad-  
justed be-  
tween the  
counties

Sect. 3. If after any general assessment or valuation of the real and personal property within this State to be made in pursuance of the provisions of an Act of the General Assembly of this State, entitled, "An Act authorizing and directing a general assessment of the real and personal property of this State," passed in February, in the year of our Lord one thousand eight hundred and sixteen, it shall appear, that the several sums assessed, levied and raised on the respective counties and paid into the Treasury of this State according to the provisions of an Act, entitled "An Act making provision for the support of government for the year one thousand eight hundred and sixteen" and according to the provisions of this Act have been unequally assessed, levied and apportioned to and upon the counties respectively, all and every such unequal assessment, levy and apportionment made in manner aforesaid shall be regulated, adjusted and settled, agree-

ably to the valuation and assessment made by the commissioners appointed for the purpose of making a general assessment of the real and personal property throughout this State; and if upon such regulation, adjustment and settlement, it shall appear, that either of the counties of this State has paid into the Treasury of this State more or less than a fair and just proportion of the State taxes for the year eighteen hundred and sixteen and this present year and every succeeding year until the general assessment shall be completed, the same shall be repaid or refunded to the county or counties overpaying, and charged, assessed, levied on and paid by every such county, as shall have been underrated or paid less than its due proportion, according to the general assessment and valuation to be made by the commissioners aforesaid.

*Passed at Dover, February 6, 1817.*

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## STATE TREASURER AND TRUSTEE OF THE SCHOOL FUND.

### I.

AN ACT requiring the State Treasurer to give security for the faithful performance of his official duties. 1827

Section 1. 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 Governor in the penal sum of thirty thousand dollars lawful money of the United States of America, with condition according to the following form; (Cons. 41,90)  
1 Bond (2, 6)

"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 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 undamaged, then the said obligation shall be void; otherwise the same shall remain in full force:*

2 Judgment  
bond

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

3 Secretary of  
State to re-  
cord  
4 the  
copy for  
Auditor

And the said obligation shall be recorded by the Secretary of State in the register of the official acts and proceedings of the Governor 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.

& certify ap-  
proval

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

6 Unless bond  
given in 7  
days, office  
forfeited

Sect. 2. 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.

7 vacancy

Sect. 3. 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 Governor 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.

(Cons. 90)

*Passed at Dover, January 29, 1827.*

1810

#### AN ACT respecting the State Treasurer.

7 Committee  
to examine  
his accounts

The Legislature of this State shall annually hereafter, at their session in January appoint a committee to consist of three members from the House of Representatives and two members from the Senate, to examine into the accounts of the State Treasurer, and to count the cash on hand, and make report thereof to the General Assembly.

*Passed at Dover, February 2, 1810.*

1819

8 Pay to be  
in gold, &c.

*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 directed to receive nothing in payment of taxes other than gold or silver coin or the notes of banks paying for their notes gold or silver on demand.*

*Adopted at Dover, 8, February, 1819.*

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met.* That all monies belonging to this State, hereafter received by the State Treasurer, shall be deposited in the Farmers' Bank of the State of Delaware, by the said Treasurer or his agents, to the credit of the said Treasurer; and the same shall remain and continue in the said Bank until drawn therefrom by checks of the State Treasurer given in payment of appropriations made by law, or in the transfer of the said monies from one State Treasurer to his successor in office. 9 Deposits in Farmers Bank

*Resolved further,* That all monies belonging to the fund for establishing schools in the State of Delaware shall be deposited in the Farmers' Bank of the State of Delaware, to the credit of the Trustee of the fund for establishing schools in the State of Delaware; and the said monies shall be and remain in the said bank subject only to the drafts of the said Trustee, drawn in discharge or in consequence of appropriations of the said fund made by law, or in the transfer of monies of the said fund from one Trustee of the said fund to his successor in office.

*Adopted at Dover, January 16, 1823.*

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met.* That the State Treasurer for the time being be and he is hereby authorized and required to purchase, on the best terms that can be procured, for and in behalf of the "Delaware College," with the money in the treasury belonging to that institution, a part of the funded debt of the United States or some kind of productive stock, at his discretion: and that the dividends on the same together with any donations in money that may hereafter be made to said institution be expended by him annually or semi-annually in similar purchases, as he shall judge most to its advantage; the whole to be placed to the credit of the same and to be denominated "the College fund;" of which fund he shall be the Trustee, and shall receive as a commission on all his investments in behalf of the same one and a half per centum and no more. 1824  
10 Trustee of Delaware College Fund

*Adopted at Dover, January 28, 1824.*

## II.

**AN ACT to create a fund sufficient to establish schools in this State.** 1796

**Section 1.** The money paid into the State Treasury on account of marriage and tavern licenses between the passing of this Act and the first day of January in the year of our Lord one thousand eight hundred and six (*a*) shall be and is hereby appropriated as part of a fund hereafter to be applied under the direction of the Legislature for establishing schools in this State. 11 Fund for establishing Schools (Fees 15 1— Slaves 2— Schools 11) a [17-18]

**Sect. 2.** The money so as aforesaid appropriated and all other money and estate hereafter given or appropriated for the said purpose, shall be distinguished and known by the name of *The fund for establishing schools in the State of Delaware.* 12 Name

**Sect. 3.** The State Treasurer for the time being, who in all matters relative to the said fund shall be stiled *The Trustee of the fund for establishing schools in the State of Delaware,* shall be and 13 State Treasurer Trustee

is hereby empowered, authorized and required to take care of the said fund, to receive, apply for and recover, by suit or action in his name as Trustee of the said fund any gift, donation or bequest, which any person or persons disposed to promote the establishment of seminaries of learning may think proper to make; and for the application of every such gift, donation or bequest to the purpose of establishing schools as aforesaid the public faith of this State is hereby most solemnly pledged; and the said Trustee is hereby further empowered to execute a lease for a term not exceeding three years to any responsible person of any real estate, which by virtue of any gift, donation or bequest may hereafter form part of the said fund, to sue, prosecute and recover for any breach of contract or covenant, to distrain for rent in arrear, and to do every other act and deed in his name as aforesaid for the benefit of the said estate and fund, which the former owner of the said estate might have legally done, excepting the sale thereof.

14 public  
faith pledged

15 powers of  
Trustee

16 Account  
of fund—  
for Gen'l As-  
sembly

17 published  
annually with  
names of do-  
nors

18 For what  
schools  
[Schools 7,  
36]

Sect. 5. The State Treasurer for the time being is hereby required to produce to, and make a settlement with, the General Assembly of this State, at their first session every year, of his account as Trustee of the fund for establishing schools in the State of Delaware, and once in every year either during or immediately after the first session of the Legislature to procure to be published in one of the newspapers of this State a particular account of the said fund, mentioning therein the names of the persons who have made any gift, donation or bequest towards the said fund, specifying the time when the same was received, and the amount or value thereof.

Sect. 7. The said fund shall be applied to the establishment of schools in the several hundreds or districts of the respective counties of this State, for the purpose of instructing the children of the inhabitants thereof in the english language, arithmetic and such other branches of knowledge as are most useful and necessary in completing a good english education; and the same shall not be applied to the erecting or supporting any academy, college or university in this State.

*Passed February 9, 1796.*

17 continued [This Act was continued, by Act of February 1, 1806, for seven years from the first day of January in that year, and by Act of January 27, 1813, until the first day of January, eighteen hundred and twenty; and see next Act.]

1822 AN ACT to revive and continue in force the Act entitled, "An Act to create a fund sufficient to establish schools in this State and for other purposes."

18 Continued  
without lim-  
itation

Section 1. The Act entitled "An Act to create a fund sufficient to establish schools in this State" passed the ninth day of February in the year of our Lord one thousand, seven hundred and ninety six shall be and the same is hereby revived and re-enacted, and every provision thereof shall be in force and so continue until repealed by law.

19 Monies  
since 1 Jan.  
1820 [22]

Sect. 2. All the monies, which have been received by the State Treasurer since the first day of January in the year eighteen hun-

dred and twenty, and which would have belonged to the School fund, if the said Act had not expired, shall be laid out and applied by the Trustee of said fund, as directed by a resolution of the General Assembly adopted the thirteenth day of February, in the year of our Lord, eighteen hundred and sixteen, which is hereby declared to be in full force and shall so continue until repealed by law: *Provided nevertheless*, that in case of a deficiency of other funds the State Treasurer may retain out of the said monies, such sum or sums of money, as may be necessary to pay the salaries due and to become due to the Chancellor, Judges of the Supreme Court and Court of Common pleas. 20 proviso for salaries of Chancellor & Judges [21]

Sect. 3. In case any of the monies aforesaid shall heretofore have been or shall hereafter be retained for and applied to any of the purposes mentioned in the proviso to the second section aforesaid, then and in such case the monies so retained and applied, shall be made good and paid over to the Trustee of the School fund out of any money hereafter received into the treasury and not otherwise appropriated. 21 reimburse- ment

*Passed at Dover, 8 February, 1822.*

*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. 1827 22 investm'ts of money of School Fund [Schools—43, 45] 23 July of Auditor

*Adopted at Dover, February 7, 1827.*

**A SUPPLEMENT** to the Act entitled *An act to create a fund sufficient to establish schools in this State.* 1797

[By sections 1 and 2, the Trustee of the fund for establishing schools was required to appropriate certain money to the purpose of subscribing for shares of stock of the Bank of Delaware, provided by the Act of incorporation for the use of the State, the subscription to be in the name of *The Trustee of the fund for establishing schools in the State of Delaware*, who in that capacity should be entitled to give as many votes as the number of shares would entitle an original stockholder or stockholders to, and demand and receive the dividends on said shares as often as they became due and apply the same according to the said Act, to which this is a supplement. 24 Stock in Bank of Delaware—for School Fund

By section 5, the State Treasurer was required with certain money to subscribe in the name of the State for shares of the said 25 for State (25)

Bank, as part of the fifty shares, which the State was entitled to subscribe agreeably to the Act of incorporation : the State Treasurer for the time being on the part of this State to give as many votes as the shares subscribed should entitle the State to as a stockholder; said shares so subscribed not to be deemed a part of the fund for establishing schools in this State.]

*Passed January 24, 1797.*

1800

### AN ACT respecting the funds of this State.

26 Appropriation of dividends

Section 2. The dividends, which shall hereafter be made on the shares of the Bank of Delaware belonging to the State, which have been subscribed agreeably to the fifth section of the Act of Assembly entitled "A supplement to an Act, entitled an Act to create a fund to establish schools in this State" shall be and is hereby appropriated to the payment of the salaries to become due to the Governor, the Chancellor, the Judges of the Supreme Court, and the Judges of the Court of Common Pleas.

*Passed at Dover, January 25, 1800.*

1823

### AN ACT authorizing a subscription to the stock of the Chesapeake and Delaware canal.

27 Stock—Ches. & Del. Canal

[By section 1. it is required, that as soon as books should be opened for subscriptions to the stock of the "Chesapeake and Delaware Canal Company," the Trustee of the fund for establishing schools in this State should subscribe, for the benefit and on behalf of said fund, to the amount of five thousand dollars in stock of said company; and by section 2, the said Trustee was required annually and within the period of each and every year for the term of five years, taking date from the first subscription authorized by said first section to make a further subscription of five thousand dollars to the stock of said company in like manner and for the benefit and on behalf of said fund.

Sect. 4. All stock obtained by virtue of this Act shall be placed to the credit of the fund for establishing schools in this State; and all interest and dividends shall be placed to the credit of said fund.

Sect. 5. The said Trustee is authorized at any election which may be held for president and directors or other officers of the Chesapeake and Delaware Canal Company to vote on any number of shares of the stock belonging to the fund aforesaid, either himself or by proxy, &c.]

*Passed at Dover, February 5, 1823.*

—o—

### STRAYS.

1829

### AN ACT concerning strays.

1 Notice of Strays (7)

Section 1. 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 advertise-

ments under his hand, describing the stray by its color 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 containing 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 appraisal under their hands. The Justice shall indorse 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 appraisal 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.

2 If no owner appear in 30 days—  
proceedings (4)  
Duty of Just. of the Peace

If the owner or his agent shall within one year after appraisal 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.

3 Owner appearing—

If no owner or agent appear and shew right as aforesaid within one year from the date of the appraisal, 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.

4 No owner appearing—  
duty of Just.

(Just. of the Peace 85)  
339 page

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

5 In case of death or Just.

Justice shall be deposited or the Justice residing nearest to the place of the taking up.

0 Strays used 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.

7 under 12 months old A beast not twelve months old, unless following its dam being a stray, shall not be deemed a stray.

8 Fees Sect. 2. The fees under this Act shall be—

Justice	Of the Justice—	\$ cts.
	For filing statement and advertising	0. 50
	For order of sale	12½
Constable	Of the constable selling—	
	For advertising	33
	Commissions on sale, on a dollar	02
Freeholders	Of the freeholders—each	25

Passed at Dover, January 20, 1829.

—o—

## SWINE RESTRAINED FROM RUNNING AT LARGE.

20 Geo. II. AN ACT to prevent swine running at large without rings and yokes, in certain parts of New-Castle county, within this government.

1 In N. Castle county (16-19) (39-5) a [39] 2 remedy [1] 3 damages

Section 2. No swine shall be allowed to run at large (unless sufficiently ringed to prevent them from rooting, and yoked to prevent them from creeping or breaking through fences) on any of the improved lands, meadows or marshes of the inhabitants in the county aforesaid (Pencader and Appoquinimink hundreds (a) only excepted) And if any swine shall be found at large and trespassing upon the improved lands, meadows or marshes of any inhabitant within the above mentioned limits, not as aforesaid sufficiently ringed and yoked (except upon the lands, meadows, or marshes of the owner or owners of the said swine,) it shall and may be lawful for any person being a freeholder, or possessing some tenement or farm within the said limits of the yearly value of forty shillings to take up or kill any such swine found upon his or their improved lands or farms, and shall immediately give notice to the owner or owners thereof—who shall be obliged to make good all damages done by such trespassing swine according to the valuation of two creditable men of the vicinage to be appointed and qualified by the next Justice of the Peace of the same county for that purpose; but in case the owner or owners of such swine should neglect or refuse to pay the damages valued as aforesaid, then it shall and may be lawful for any Justice of the Peace of the county aforesaid, who is hereby required upon complaint made to him by the person or persons so trespassed upon in any manner aforesaid, to grant a warrant under his hand and seal, in order to recover the valuation of such damages as aforesaid, to be

levied by distress and sale of the offender's goods and chattels, together with costs accrued thereon,—or if the owner or owners of said trespassing swine be not known, shall inform the next Justice of the Peace of the same county, whereupon the said Justice shall cause the same immediately to be appraised by two creditable men as aforesaid upon their oaths or affirmations, and sold to the highest bidder, and after deduction of charges and damages, the residue of the money arising by such sale, shall be paid to the said Justice for the use of such owner or owners if within six months next after such sale he or she shall claim the same, and (to the satisfaction of such Justice) prove his or her right thereto; and the said Justice shall cause an advertisement to be set up in some public place of the neighborhood, setting forth the number and marks of all such swine and the time of their being so taken up or killed as aforesaid. But in case no such owner shall within the said six months appear, and make out such his or her right as aforesaid, then the said residue shall by the said Justice be paid for the use of the poor to the overseer or overseers in the hundred, where the trespass is committed, and the said owner shall forever after be foreclosed and debarred from any title or claim thereto.

4 owner unknown

5 notice

Sect. 3. No person or persons inhabiting within the limits aforesaid (except as before excepted) shall be allowed or permitted to drive or carry any swine out of the limits aforesaid, which were raised or bred therein, with intent that the said swine may run at large without rings and yokes in any other parts of the said county of New-Castle, under the penalty in this Act before provided against swine running at large within the said limits, to be disposed of in manner aforesaid, unless the person or persons so driving or carrying any such swine, shall at the time of his or their doing thereof, be owner or owners or possessor or possessors of land near the place whereunto such swine shall be so driven or carried, and whereupon he or they shall have a tenant or tenants, servant or servants, slave or slaves, residing or inhabiting.

6 Persons within the limits not to carry their swine to run at large out of the same, &c.

[7]

7 unless he have land, &c.

Passed October 31, 1746:

## II.

AN ACT to restrain persons from suffering swine to go at large within certain limits. 1829

Section 1. 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, 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; and any constable for the county upon the application of the person impounding shall sell the

8 Remedy as to all places, to which this Act shall be extended  
9 impounded

10 notice

11 sale



12 restored to  
owner

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 neighborhood thereof, at least three days before the day of sale: and the constable, 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.

13 trespass-  
sing—killed

14 notice

15 exception

Sect. 2. If any swine be found trespassing on inclosed ground within any limits, to which this Act shall be extended, the occupier of said inclosed 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 inclosed within the meaning of this section, it is not necessary for the fence to be a lawful fence. But swine escaping from the inclosed ground of their owner into the inclosed 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.

16 Places  
within this  
Act  
17 Newcastle  
18 Part of Appo-  
quimink

19 St. Georges

20 Cantwell's  
Bridge, &c.

Sect. 3. This Act shall extend to and be in force in the following limits in New-Castle county, that is to say;

First, Beginning at the Bridge over the southerly prong of Appoquimink creek on the road from Middletown to Blackbird; and running from thence along said prong to the Wolfswamp, thence to Dutchman's pond and the State line, thence up said line to the line of Appoquimink hundred, and with said line to the road aforesaid and down said road to the beginning: Second, the bounds of the town of St. Georges; and Third, Beginning at the junction of Drawyers and Appoquimink 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 Appoquimink 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.

21 Kent  
22 Duck  
creek

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 New-Castle 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 parallel 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, 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: Fifth, Beginning at the Fork of Murderkill and Spring creeks, and running up Spring creek to the division line between

23 part of  
Duck creek  
hundred

24 Kenton  
25 Dover

26 Frederica

- 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 draw bridge over Mispillion creek at Milford :—
- 27 Camden  
&c. 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 draw bridge over Mispillion creek at Milford :—
- 28 Milford<sup>(37)</sup> Also this Act shall extend to and be in force within the following

- 29 Sussex limits in Sussex county, that is to say ; First, the distance of one half mile in every direction in said county from the draw-bridge 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 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 Lewis-creek to the mouth of Pagan or Canary creek aforesaid : Fourth, Beginning at the ship-yard late of Barkly Townsend formerly Thomas Baldwin's, and running thence a straight line to a mill heretofore called said Townsend'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 eighths 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
- 30 South Milford
- 31 Milton, &c.  
(37)
- 32 Lewis'tn
- 33 Laurel
- 34 Georgetown
- 35 Bridgeville
- 36 Seaford  
(37)
- 37 Proviso, respecting, Seaford,

# SWINE RESTRAINED FROM RUNNING AT LARGE.

517

without the bounds secondly described in Sussex county, and severally described in Kent county, unless such swine shall be fed or kept by some person or persons within such bounds.

Sect. 4. The "Act to prevent swine running at large without rings or yokes in certain parts of New-Castle 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 New-castle 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.

Sect. 5. 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.

*Passed at Dover, January 22, 1829.*

## III.

### AN ACT to prevent swine from running at large in the town of New-Castle and its neighborhood.

1813

Section 1. No person or persons shall suffer or permit any of his, her or their hogs or swine to run at large within the bounds of the town of New-Castle or within one mile thereof; and any such hog, hogs or swine so permitted or suffered to run at large within the said bounds or limits shall be forfeited to and for the use of the poor of the county of New-Castle.

Sect. 2. The clerk of the market within the said town for the time being shall act as a receiver for the purpose of keeping and detaining all such hogs or swine, so permitted or suffered to run at large within the limits aforesaid; and if the clerk shall neglect or refuse to do the duties hereinafter enjoined upon him as receiver, he shall forfeit and pay the sum of ten dollars to be recovered by the commissioners of the said town as debts under twelve pounds are recoverable by law and to be applied to the use of the town; and upon every such neglect or refusal or in case of death or removal, any Justice of the Peace within the said town shall appoint some other fit person to act as receiver who shall be liable to the same penalty for neglect of duty, to be recovered and applied as aforesaid.

Sect. 3. It shall be lawful for any person or persons to seize, drive or convey alive all such hogs or swine as shall be permitted or suffered to run at large within the limits aforesaid to the receiver, who is hereby empowered and required to receive and detain the same; and it shall also be the duty of such receiver to seize and detain all such hogs or swine, as he may find or know to be running at large as aforesaid; and every such person, for every hog or swine of the weight of fifty pounds or upwards, so seized and conveyed to the receiver shall be entitled to the sum of one dollar, and if under fifty pounds, shall be entitled to fifty cents; and the said receiver, if such hog or swine shall be seized by him, shall be entitled to the same compensation.

27 Camden  
&c.

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 draw bridge over Mispillion creek at Milford:—

28 Milford\*  
(37)

29 Sussex  
30 South Mil-  
ford

31 Milton, &c  
(37)

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 draw-bridge 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 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 Lewis-creek to the mouth of Pagan or Canary creek afore-said: Fourth, Beginning at the ship-yard late of Barkly Townsend formerly Thomas Baldwin's, and running thence a straight line to a mill heretofore called said Townsend'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:

32 Lewist'n

33 Laurel

34 Georget'n  
35 Bridgev'le  
36 Seaford  
(37)

Fifth, the bounds of Georgetown: Sixth, the village of Bridgeville and the distance of three eighths 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

37 Proviso,  
respecting,  
Seaford,

without the bounds secondly described in Sussex county, and severally described in Kent county, unless such swine shall be fed or kept by some person or persons within such bounds.

Milton and  
Milford

Sect. 4. The "Act to prevent swine running at large without rings or yokes in certain parts of New-Castle 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 New-castle 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.

38 L extended

(1)

Sect. 5. 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.

36 Gen'l issue

*Passed at Dover, January 22, 1829.*

### III.

*AN ACT to prevent swine from running at large in the town of New-Castle and its neighborhood.*

1813

Section 1. No person or persons shall suffer or permit any of his, her or their hogs or swine to run at large within the bounds of the town of New-Castle or within one mile thereof; and any such hog, hogs or swine so permitted or suffered to run at large within the said bounds or limits shall be forfeited to and for the use of the poor of the county of New-Castle.

29 Town of  
N Castle and  
neighborhood

Sect. 2. The clerk of the market within the said town for the time being shall act as a receiver for the purpose of keeping and detaining all such hogs or swine, so permitted or suffered to run at large within the limits aforesaid; and if the clerk shall neglect or refuse to do the duties hereinafter enjoined upon him as receiver, he shall forfeit and pay the sum of ten dollars to be recovered by the commissioners of the said town as debts under twelve pounds are recoverable by law and to be applied to the use of the town; and upon every such neglect or refusal or in case of death or removal, any Justice of the Peace within the said town shall appoint some other fit person to act as receiver who shall be liable to the same penalty for neglect of duty, to be recovered and applied as aforesaid.

40 Clerk of  
the market  
receiver  
(44)

41 penalty for  
neglect or re-  
fusal

42 vacancies

Sect. 3. It shall be lawful for any person or persons to seize, drive or convey alive all such hogs or swine as shall be permitted or suffered to run at large within the limits aforesaid to the receiver, who is hereby empowered and required to receive and detain the same; and it shall also be the duty of such receiver to seize and detain all such hogs or swine, as he may find or know to be running at large as aforesaid; and every such person, for every hog or swine of the weight of fifty pounds or upwards, so seized and conveyed to the receiver shall be entitled to the sum of one dollar, and if under fifty pounds, shall be entitled to fifty cents; and the said receiver, if such hog or swine shall be seized by him, shall be entitled to the same compensation.

43 Seizing  
hogs

44 receiver's  
duty

45 compensa-  
tion

46 Hogs seized, appraised & sold Sect. 4. The receiver shall cause all such hogs so seized by him or conveyed to him as aforesaid to be appraised by two freeholders of the hundred of New-Castle and sold at public vendue, after giving four days notice by advertisements set up within the limits aforesaid of the time and place of sale ; and the monies arising from such sales shall be applied to the use of the poor of the said county, after deducting the compensation allowed to the receiver as aforesaid or person or persons, who seized and conveyed such hogs or swine to the receiver, and also retaining what may be reasonable for his trouble and expenses in receiving, detaining, supporting and selling the same hogs or swine to be adjudged and determined by the freeholders, who may appraise such swine as aforesaid ; and the said receiver shall account with the nearest Trustee of the poor, and shall pay over the monies arising from the sales aforesaid after the deduction aforesaid to the Treasurer of the poor : *Provided nevertheless*, That if any owner of a hog, hogs or swine shall within four days after the same shall be driven or conveyed to the receiver aforesaid pay the sum of one dollar for every hog of the weight of fifty pounds and upwards, and fifty cents for every hog under fifty pounds weight, that shall be so as aforesaid conveyed to the receiver together with the expenses to the receiver for receiving and keeping the same to be adjudged and determined by the freeholders appraising the same as aforesaid, then in every such case such hog, hogs or swine shall be restored to the owner thereof on his, her or their application for the same.

51 Gen'l issue Sect. 5. If any suit or action shall be brought or prosecuted against any person or persons whomsoever for any act or thing done in pursuance of this Act, it shall be lawful for the defendant in such suit or action to plead the general issue and give this Act in evidence, whereof all Judges and Justices of the Peace are required to take notice and govern themselves accordingly.

*Passed at Dover, February 2, 1813.*

## TAVERNS.

### I.

13 Geo II AN ACT for regulating inn-holders, tavern-keepers and other public house-keepers within this government, and empowering the Justices to settle the rates of liquors.

For regulating inn-holders, tavern-keepers, and other public house-keepers within this government.

1. 1<sup>st</sup> page  
(Fees 140)  
(Prisoners &  
Gauls 6)

Section 1. No person or persons within this government shall presume to keep any public house of entertainment, tavern, inn, ale-house, ordinary or victualling-house, without obtaining by petition a recommendation from the Justices of the Court of Quarter Sessions to his honor the Governor for the time being for a license for keeping the same, setting forth that the person so petitioning

is a fit person and well qualified for keeping a tavern or house of entertainment.

Sect. 3. No person or persons within this government shall be recommended to the Governor by such Justices as aforesaid for a license for keeping such public house, tavern, inn or ordinary, without making first appear to the satisfaction of the said Justices that such petitioner is well qualified for keeping the same and hath necessaries fit and suitable for the entertainment of travellers, and that the place or habitation of such petitioner is situate in a proper and convenient place and stage for the entertainment of travellers as aforesaid.

2 ground of recommend'g

Sect. 6. If any master or keeper of any such public house or houses or tavern as aforesaid shall after the publication of this Act presume to trust or give any credit to any minor or minors, every such master or keeper of such house or houses shall lose the whole sum or sums so trusted and credited, and is hereby precluded and debarred from suing for the same before any magistrate or in any court within this government.

3 credit to minors, unlawful

## II.

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

1827

Section 1. 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 misdemeanor, 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.

4 Tippling at unseasonable hours—drunkenness gaming, &c. penalty for suffering

Sect. 2. 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, whisky 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 misdemeanor, and upon conviction thereof shall forfeit and pay to the State a fine of fourteen dollars.

5 Penalty for selling liquor by small measure, without license



## I.

1808

**AN ACT** to incorporate a company for making a turnpike road from the borough of *Wilmington* to the line between this State and *Pennsylvania*, or to communicate with the artificial road contemplated from the *Gap* to *Newport*.

1 *Wilmington*  
& *Lancaster*

2 corporate  
name

[By sect. 2, the company are incorporated by the name of *The Wilmington Turnpike Company*.]

3 route

[By sect. 8, the route of said road is from (a) the borough of *Wilmington* to the line between this State and *Pennsylvania*, or to communicate with the artificial road contemplated from the *Philadelphia* and *Lancaster* turnpike road to *Newport*.]

4 Width and  
manner of  
making

[By sect. 10, the president, managers and company shall cause a road to be laid out not exceeding one hundred feet in width, and shall cause twenty feet thereof in breadth at least, to be made an artificial road, which shall be bedded with wood, stone, gravel, clay or other proper and convenient materials well compacted together, a sufficient depth to secure a solid foundation for the same; and the said artificial road shall be faced with clay, gravel or stone pounded, or other small hard substance, in such manner as to secure a firm, and as nearly as the nature of the country and the materials will admit an even surface rising towards the middle by a gradual arch, and shall forever hereafter maintain and keep the same in perfect order and repair: *provided*, that no toll be demanded or taken from any person passing or repassing from one part of his or her farm to another, or to or from any place of public worship or funeral, on days appointed for that purpose.

5 no toll in  
certain cases

6 License to  
take toll

Section 11, provides that the Governor on notice that a specified distance of said road is perfected shall appoint three skillful and judicious persons to examine it and report whether the said road is so far executed in a complete and workman-like manner according to the true intent of this Act, and that if their report be in the affirmative, he shall by License allow the company to erect so many gates across the road as will be sufficient to collect the tolls.]

7 Toll gather-  
er

a (15)

[5-29-31]

8 Tolls

Sect. 12. The said company having perfected the said road or such part thereof from time to time as aforesaid and the same being examined, approved and licensed as aforesaid, it shall and may be lawful for them to appoint such and so (a) many toll-gatherers as they shall think proper, to collect and receive of and from all and every person and persons using the said road the tolls and rates herein after mentioned and to stop any person riding, leading or driving any horse or mule, or driving any cattle, hogs, sheep, sulky, chair, chaise, phaeton, cart, wagon, wain, sleigh, sled or other carriage of burden or pleasure from passing through the said gates or turnpikes, until they shall have respectively paid the same, that is to say; for every space of five miles in length of the said road, the following sums of money, and so in proportion for any greater or less distance, or for any greater or less number of hogs, sheep or cattle, to wit: for every score of sheep, four cents; for every score of hogs, six cents; for every score of cattle, twelve cents; for every horse or mule, laden or unladen with his rider or leader, three cents; for every sulky, chair or chaise,

with one horse and two wheels, six cents, and with two horses, nine cents; for every chair, coach, phaeton, chaise, stage-wagon, coachee or light-wagon with two horses and four wheels, twelve cents; for either of the carriages last mentioned with four horses, twenty cents; for every other carriage of pleasure, under whatever name it may go, the like sum according to the number of wheels and of horses drawing the same; for every sleigh or sled, two cents for each horse drawing the same; for every cart or wagon or other carriage of burden, the wheels of which do not in breadth exceed four inches, four cents for every horse drawing the same; for every cart or wagon, the wheels of which shall exceed in breadth four inches and shall not exceed seven inches, three cents for each horse drawing the same; for every cart or wagon, the breadth of the wheels of which shall be more than seven inches and not more than ten inches, or being of the breadth of seven inches and shall roll more than ten inches, two cents for each horse drawing the same; for every cart or wagon, the breadth of the wheels of which shall be more than ten inches and not exceeding twelve inches, or being ten inches shall roll more than fifteen inches, one cent and a half for each horse drawing the same; and for any such carriage, the breadth of the wheels of which shall be more than twelve inches, one cent for each horse drawing the same; and when any such carriage as aforesaid shall be drawn by oxen or mules in the whole or in part, two oxen shall be estimated as equal to one horse, and every ass or mule as equal to one horse, in charging the aforesaid tolls.

Sect. 13. If any person or persons owning, riding on or driving any carriage of burden or pleasure as aforesaid, or owning, riding, leading or driving any horse or mule, or driving any hogs, sheep or cattle as aforesaid shall, with an intent to defraud the said company or to evade the payment of any of the tolls or duties as aforesaid, pass therewith through any private gate or bar or along or over any private passage-way, or along or over any other ground or land near to or adjoining any turnpike or gate, which shall be erected in pursuance of this Act, or if any person or persons shall with the intent aforesaid take off, or cause to be taken off any horse or other beast, or cattle of draught or burden from any carriage of burden or pleasure, or shall practice any other fraudulent means or device, with the intent to evade or lessen the payment of any such toll or duty, all and every such person or persons offending in manner aforesaid, shall for every such offence respectively forfeit and pay to the Wilmington turnpike company the sum of fifteen dollars to be sued for and recovered with costs of suit before any Justice of the Peace in like manner and subject to the same rules and regulations, as debts of equal amount are or may be by law recoverable.

9 Frauds to  
evade toll  
penalty  
(32)  
(33)

10 manner of  
recovery  
(22-23)

Sect. 14. If the said company shall neglect to keep the said road in good and perfect order and repair for the space of fifteen days, and information thereof shall be given to any Justice of the Peace of New-Castle county aforesaid, such Justice shall issue a precept directed to any constable, commanding him to summon three judicious freeholders to meet at a certain time in the said precept to be mentioned, at the place in the said road which is complained of.

11 Repairs

12 not in re-  
pair tolls to  
cease

13 penalty  
for exacting  
(22-23)

14 if not re-  
paired—fur-  
ther proceed-  
ings

15 Number  
of gates limit-  
ed  
16 Index-  
posts

mile-stones

17 rates

of which meeting notice shall be given to the keeper of the gate or turnpike nearest thereto ; and the said Justice shall at such time and place by the oath or affirmation of the said freeholders inquire whether the said road, or any part thereof is in such good and perfect order and repair as aforesaid, and shall cause an inquisition to be made under the hands and seals of himself and a majority of the said freeholders; and if the said road shall be found by the said inquisition not to be in such good order and repair as herein is required, he shall so certify, and send one copy of the said inquisition to each of the keepers of the turnpikes or gates, between which such defective place shall be, and from thenceforth the tolls hereby granted to be collected at such turnpikes or gates for the intermediate distance between them, shall cease to be demanded, paid or collected, until the said defective part or parts of the said road shall be put into good and perfect order and repair as aforesaid ; and if any of the keepers of the gates aforesaid shall take, or attempt to exact tolls for the intermediate distance between the gates aforesaid from any traveller during the time the road shall continue out of repair, such keeper shall forfeit and pay to the person, who will prosecute for the same, the sum of five dollars to be recovered before any Justice of the Peace, as debts of equal amount are, or may be by law recoverable ; but if the same road shall not be put into good and perfect order and repair before the next ensuing Court of General Quarter Sessions of the Peace for New-Castle county aforesaid ; the said Justice shall certify, and send a copy of the said inquisition to the Justices of the said court ; and the said court shall thereupon cause process to issue, and bring in the bodies of the person or persons intrusted by the company with the care and the superintendence of such part of the said road as shall be found defective as aforesaid, and shall direct a bill of indictment to be sent to the grand inquest against the person or persons intrusted as aforesaid, and upon conviction shall give such judgment according to the nature and aggravation of the neglect, as the said court in their discretion shall judge proper ; provided the fine in no instance shall be less than twenty dollars nor exceeding one hundred dollars ; and the fines so to be imposed shall be recovered in the same manner, as fines for misdemeanors are usually recovered in the said county, and shall be applied to and for the benefit of the public roads and common high-ways in the county of New-Castle aforesaid.

Sect. 16. [By this section, there cannot be more than one gate for every two miles.]

Sect. 18. The said company shall cause posts to be erected at the intersection of every road falling into and leading out of the said turnpike road with boards and index-hand pointing to the direction of such road, on both sides whereof shall be inscribed in legible characters, the name of the town or place to which such road leads and the distance thereof in measured or computed miles, and shall also cause mile-stones to be placed on the side of the said road, to designate the distances to and from the principal places thereon, and also shall cause to be affixed on the gates to be erected for the information of travellers and other using the said road, a printed list of the rates of toll which from time to time may be lawfully demanded.

Sect. 19. If any person or persons shall wilfully break, deface, pull up or prostrate any mile-stone, which shall be placed in pursuance of this Act on the side of the said road, or shall obliterate the letters or figures inscribed thereon, or shall wilfully break, pull down, deface, destroy or injure any direction-post which shall be erected in pursuance of this Act at the intersection of any road as aforesaid, or the board or index-hand affixed thereto in conformity with the directions of this Act, or shall obliterate the letters or figures inscribed or marked thereon, or destroy, deface or obliterate the letters, figures or other characters marked at any turnpike or gate, which shall be erected in pursuance of this Act for all or any of the purposes therein mentioned, or the whole or any part of any printed list of the rates of tolls, which shall be affixed in pursuance of the directions of this Act at any such gate or turnpike, he or they so offending in the premises shall and each of them shall for every such offence, severally and respectively forfeit and pay to the said president, managers and company the sum of twenty dollars to be sued for and recovered with costs of suit before any Justice of the Peace in manner aforesaid.

18 Injuring  
index-posts,  
&c.  
penalty  
(22-23)

(10)

Sect. 20. All wagoners, carters and drivers of carriages of all kinds, whether of burden or pleasure using the said road shall, except when overtaking and passing by a carriage of slower draught, keep their horses and carriages on the right-hand side of the said road in the passing direction, leaving the other side of the said road free and clear, for other carriages to pass and repass; and if any wagoner, carter or driver shall offend against this provision, he shall forfeit and pay any sum not exceeding two dollars to any person, who shall by reason thereof be obstructed in his passage and will sue for the same before any Justice of the Peace, to be recovered with costs in like manner aforesaid.

19 Keeping to  
the right

20 penalty for  
neglecting  
(22-23)

(10)

Sect. 21. If any toll-gatherer on the said road shall demand from any person or persons using the said road any greater rate of toll than by this Act is authorized and allowed, such toll-gatherer shall forfeit and pay the sum of twenty dollars for every such offence to be for the use of the person aggrieved to be recovered before any Justice of the Peace of New-Castle county aforesaid in such manner as other debts are before them recoverable.

21 Unlawful  
toll—  
penalty  
(8-20-32)

Sect. 22. If in the case of any suit or prosecution, which shall be commenced under the directions of this Act for any penalty incurred under the same, whether by or against the said company, their servants or assignees, the said suit or prosecution shall not be sustained by the plaintiff or prosecutor, then and in such case the person or persons prosecuted as aforesaid shall recover by the judgment of the Justice, before whom such suit or prosecution shall be depending, or by action before the Court of Common Pleas of New-Castle county aforesaid (if such prosecution had been instituted before the Court of General Quarter Sessions of the Peace) such sum not exceeding the amount of the penalty, for which the suit or prosecution shall be commenced, as shall be deemed a reasonable retribution for the vexation of such suit or prosecution.

22 Vexatious  
suits, &c.

Sect. 23. No suit or action shall be brought or prosecuted by any person or persons for any penalties incurred under this Act,

23 Limitation  
of action

*Singma Road toll was Road*

24 gen'l issue

unless such suit or action shall be commenced within three months next after the fact committed, and the defendant or defendants in such suit or action may plead the general issue and give this Act and the special matter in evidence, and that the same was done in pursuance and by the authority of this Act.

35 Work begun & completed

Sect. 24. If the said company shall not proceed to carry on the said work within three years after this Act comes into operation, or shall not within ten years thereafter, complete the said road, according to the true intent and meaning of this Act, then in either of those cases, it shall and may be lawful for the Legislature of this State to resume all and singular the rights, liberties, privileges and franchises by this Act granted to said company.

29 junction with Gap and Newport turnpike

[By section 27, it is provided, that as soon as the Gap and Newport turnpike company have erected a gate across their road immediately below the junction with this road in conformity to the Act incorporating that company, the Wilmington turnpike company shall erect a gate across this road at or near the said junction.]

27 or any other

[By section 28 it is provided, that as soon as any turnpike road shall be established by law to intersect this road, this company shall erect a gate immediately below the junction.]

28 Prohibited from preventing junction (26)

[By section 29 the company are prohibited from causing or suffering any obstruction with intent to prevent any company incorporated by law to form a junction with this road, from forming such junction, or from repairing this road opposite the place of such junction, if this company neglect to do so.

*Passed at Dover, February 1, 1808.*

1817

### A SUPPLEMENTARY Act to said Act.

Whereas doubts have arisen respecting the construction of the twelfth section of the Act to which this is a supplement; for removing whereof—

29 Divisions of the road & toll gates

Section 1. It shall and may be lawful for the said Wilmington turnpike company to divide their turnpike road into as many divisions, as they may deem proper, and from time to time to alter the same, so that the said divisions respectively shall not be less than two nor more than five miles in length, and on each of the said divisions to erect one turnpike gate, at which they shall be authorized to demand and receive from all persons using the said road the same proportion of the rates of tolls mentioned in the said twelfth section, which the length of such division on which the said gate is placed bears to five miles; and to stop any person riding, leading or driving any horse or mule, or driving any cattle, hogs, sheep, sulky, chair, chaise, phaeton, cart, wagon, wain, sleigh, sled or other carriage of burden or pleasure, from passing through such gate, until they shall have respectively paid the same: *Provided always*, that the said company shall cause to be affixed on the said gate or gates now or hereafter to be erected for the information of travellers and others using the said road, a printed list of the number and length of said divisions: *And provided always*, that any person or persons residing in Chris-

30 Notice of divisions

31 Commutation

tiana hundred or within the county of New-Castle and within two miles of said road, except persons keeping horses or any sort of carriages of burden or pleasure for hire, shall have a right to contract for the use of said road for himself and his family by the year, to commence on the first day of January and to end on the thirty-first day of December inclusive in each year, or such part thereof as may be unexpired at the time of his application, on the following conditions: The person or persons applying to commute with the said company shall pay on the first day of January in each year or at the time of such application (if made after that period) to said company such sum as may be agreed upon by the parties, not less than five nor more than ten dollars, which said sum shall be carried to the credit of said applicant on the books of said company on account of his commutation; that there shall be charged to said commutant by the said company all tolls incurred by him during the year aforesaid or the residue thereof unexpired at the time of such application at the rate, which the distance used by the said commutant bears to five miles, namely, for any distance not exceeding one mile, one fifth of the rate of toll established by law for five miles, if more than one mile and not exceeding two, two fifths of said rate, and so in like manner for any greater distance; that at the close of the said year, there shall be deducted from the aggregate of tolls so charged, twenty-five per centum, and if the residue shall be greater than the sum passed to the credit of the commutant as aforesaid, then the difference shall be paid by the said commutant to the said company and be recoverable by law as other debts; but if the sum so passed to the said commutant's credit shall exceed the said residue of tolls, then such excess shall be refunded to the said commutant or his legal representatives by the said company and be recoverable by law as other debts; and lastly that no benefit of the commutation provided by this section shall be enjoyed by any person or persons, until the balance, if any found to be due as aforesaid for tolls commuted under this Act for any preceding year or years, be paid to the said company.

Sect. 2. If any person or persons owning, riding or driving any carriage of burden or pleasure, or owning, riding, leading or driving any horse or mule, or driving any hogs, sheep or cattle shall leave the said turnpike road within three hundred yards of any turnpike gate now or hereafter lawfully to be erected and shall return upon the same road within the same distance on the opposite side of said gate, all and every such person or persons shall pay the toll demandable at the said gate in the same manner, as if he, she or they had passed through the same; and in case of non-payment of such toll at that time such person or persons shall be liable to the same penalty or penalties, forfeiture and forfeitures and to be recovered in like manner, as is or are provided in the thirteenth section of the Act, to which this is a supplement: *Provided*, that nothing in this Act shall be construed to repeal or impair the force and effect of the said thirteenth section.

32 When liable for toll—the not passing gate

33 not paying

penalty  
(9-10)

*Passed at Dover, Jan. 28, 1817.*

## II.

- 1808      **AN ACT** to incorporate a company for the purpose of making an artificial road from the Philadelphia and Lancaster turnpike road in Lancaster county at or near the Gap tavern to the line of the State of Delaware, and to extend the same artificial road from thence by the nearest and best practicable course to Newport on Christiana creek, in the same State.
- 34 Gap & Newport      [By Section 2, the company are incorporated by the name of *The president, managers and company of the Gap and Newport turnpike company.*]
- 35 Corporate name      Sect. 10. [This section is the same as section 10 of the preceding Act (4) and the same proviso (5).]
- 36 Width & manner of making, &c (4, 5)      Sect. 11. [This section is the same as section 11 of the preceding Act, the specified distances only being different.]
- 37 License (6)      Sect. 12. [This section is the same as section 12 of the preceding Act except the word *vain* is not in this section.]
- 38 Tolls (7, 8, 11)      Sect. 13. [This section is the same as section 13 of the preceding Act; in this section the words "the president, managers and company of the Gap and Newport turnpike road" are used instead of the words *the Wilmington turnpike company* in that section.]
- 39 Frauds to evade toll (9, 10)      Sect. 14. [This section is the same as section 14 of the preceding Act, except that in this section the words "the proper county" are used instead of the words *New-Castle county* in that section, and that in this section the words following the words "the said county," in the last clause are "and shall be paid to the supervisors of the high-ways of the place, wherein the offence was committed to be applied to repairing such highways, as the hundred or county is bound to repair at the public expense thereof."]
- 40 Inquiry of repair, &c. [11, 12, 13, 14]      Sect. 15. [By this section there cannot be more than one gate for every five miles.]
- 41 Number of gates limited      [By section 17, it is provided, that the president and managers shall at the end of every third year after the date of the incorporation, until two years next after the whole road shall be completed lay before the General Assembly an abstract of their accounts; and if at the end of two years after the said road shall be completed, it shall appear from the average profits for said two years that the clear income will not bear a dividend of six per cent. per ann. on the capital expended, then it shall be lawful for the president, managers and company to increase the tolls in equal proportions on every allowance, so as to raise the dividends to six per cent. per ann.; and that at the end of every ten years after the road completed, a like account for the three preceding years shall be rendered to the General Assembly, and if it shall appear that the clear profits will bear a dividend of more than nine per cent. per ann., the tolls shall be reduced so as to reduce the dividend to nine per cent. per ann.]
- 42 Accounts to be laid before General Assembly

Sect. 18 & 19. [These sections are the same as sections 18 & 19 of the preceding Act.]

Sect. 20. [This section is the same as section 20 of the preceding Act.]

Sect. 21. [This section is the same as section 21 of the preceding Act, except that in this section the words following the words "such offence" are "one half to the use of the supervisors of the roads or highways of the hundred in which the forfeiture shall be incurred, and the other half to the use of the person suing for the same, to be recovered before any Justice of the Peace of the county, where such offence shall have been committed."]

Sect. 22, 23, 24. [These sections are the same as sections 22, 23, 24 of the preceding Act.]

Sect. 25. If the Legislature should, at any time after the year one thousand eight hundred and thirty, think proper to take possession of the said road, three persons shall be appointed by the Governor, and three by the president and managers of the said company, and three by the Judges of the Supreme Court, who are hereby required to appoint the same, who, or any six or more of them, not having any interest in the said road, shall proceed to examine and estimate the value of the property which the said company have therein, and certify the amount thereof to the Governor of this State, who shall cause the same to be laid before the Legislature, at their next session, and whenever the amount, so certified, shall be paid by the State to the said company, their right to take toll on the said road, together with all their right, title, claim and interest therein, shall cease and determine.

Sect. 27 & 28. [These sections are the same in effect as sections 27 and 28 of the preceding Act.]

### III.

AN ADDITIONAL SUPPLEMENT to An Act entitled "An Act to incorporate a company for making an artificial road from the town of New-Castle in New-Castle county to the line of this State in the route or direction to Frenchtown on Elk River in Cecil county, in the State of Maryland."

[By section 2. the company is incorporated by the name of The president, managers and company of the New-Castle and Frenchtown turnpike.]

[Sect. 4 provides for licences to take toll.]

Sect. 5. Every person or persons, who shall prefer an annual contract for the use of the said road, shall be entitled for himself and his family to all the benefits of the same, (except as to stages for the conveyance of persons for hire and wagons for the conveyance of goods, wares and merchandise,) for the sum of one dollar per mile annually to be paid in such manner, that a quarterly payment shall always be in advance. And if any person or persons, who wish to make such contract, shall think the annual sum aforesaid unreasonable and disproportionate to the number of their family and their use of the said road, the party so aggrieved and the president of the said company shall each choose one disinter-

43 Index posts, &c.

[16-17]

44 Keeping to the right

[19-20]

45 Unlawful toll

[21-37]

46 (22, 23, 24 25)

47 Legisla-  
ture after  
1830, taking  
the road

1813

New-Castle  
& Frenchtown

49 Corporate  
Name

50 Commota-  
tion



ested person, who shall decide what reduction shall be made from the annual payment aforesaid; and in case the two persons so chosen cannot agree, they shall choose a third person, and then the three persons or a majority of them shall decide as aforesaid; or in case the said president of the New-Castle and Frenchtown turnpike company shall neglect or refuse to choose a disinterested person for the space of five days, the person chosen by the party aggrieved as aforesaid shall decide what reduction ought to be made; and the sum thus fixed shall be the commutation of such person for the current year.

51 Frauds to  
evade tolls  
[9]

Sect. 6. [This section is the same substantially as section 13 of the Act first under this title—the words “or ox” being inserted in this section after the word “mule” and the words “the said company” being used in this section in place of the words *the Wilmington turnpike company* in said section 13.]

52 Commis-  
sioners of  
roads in New-  
Castle & Pen-  
cader author-  
ized to sub-  
scribe

[By section 7, the commissioners of roads in New-Castle hundred or a majority of them and the commissioners of roads in Pencader hundred or a majority of them, are authorized for each hundred, to subscribe for any number of shares not exceeding one hundred, and to vote at elections and receive dividends.]

*Passed at Dover, January 28, 1813.*

1818

**A SUPPLEMENT** to an Act entitled “*An additional supplement to an Act entitled an Act to incorporate a company for making an artificial road from the town of New-Castle in New-Castle county to the line of this State in the rout or direction to Frenchtown on Elk river in Cecil county in the State of Maryland.*”

53 Route &  
width

Section 1.—[By this section the president, managers and company of the New-Castle and Frenchtown turnpike are authorized to lay out an artificial turnpike road from the place known by the name of Clark's Corner as far as the Maryland line in the direction toward Frenchtown, and after the said road is located of the breadth of sixty feet to cause a map of the same to be made; which map shall be certified by the surveyor, signed by the president and delivered to the Recorder of New-Castle county, who is required to record the same, and said map with the certificate of the surveyor, the signature of the president and certificate of the Recorder with the seal of his office or copy thereof is evidence.]

54 Penalty  
for nuisances

And in case any person or persons shall thereafter obstruct the road of the said company so laid out and recorded, or shall commit any nuisance thereon, and do not remove any such obstructions or nuisances therefrom within twenty four hours after notice given him, her or them, such person or persons so offending shall severally for every such offence forfeit and pay to the said company the sum of ten dollars for every twenty four hours, such obstruction or nuisance shall be continued, after such notice has been given; which penalty shall be recoverable with costs of suit before any Justice of the Peace in and for New-Castle county, as debts of a like amount are by law recoverable. *Provided however,* that the president and managers of the New-Castle and Frenchtown turnpike shall not in the location of their road or in the prosecution of the

55 not to ob-  
struct any o-  
ther turnpike  
or road on Ch.  
& Del. canal

same in any way hinder or obstruct any other turnpike or canal company heretofore incorporated for making any artificial road or canal in the county of New-Castle, or hereafter offer any let or hindrance to the progress of the Chesapeake and Delaware canal, if the same should cross the said road ; nor shall the said turnpike company hinder any county or public road from crossing their said road, or offer any let or hindrance to any person or persons whatsoever from travelling across said road in the direction of any public or private way.

Sect. 6.—[This section is the same in substance as section 12 of 56 Tolls (7,8) the Act first under this title—except that these words in that section “or being of the breadth of seven inches and shall roll more than ten inches” are omitted in this section.]

*Provided however* that no tolls be demanded or taken from any person passing or repassing from one part of his or her farm to another part of the said farm, or to or from any place of public worship, or funeral, on days appointed for that purpose, or from any citizen legally qualified to vote when going to or from the place of any general or special election upon days held or appointed for that purpose. Persons exempt from toll

Sect. 7.—[By this section there can not be more than one gate for every five miles.] Number of gates limited

[By section 8, if at the end of two years from completing the road, it shall appear by an abstract of the accounts rendered to the General Assembly, that the clear income will not bear a dividend of six per cent. per ann. on the capital, there is the like provision for increasing the tolls, and in case of increase the like provision for decennial accounts, and for reducing the tolls if the clear income will bear a dividend exceeding nine per cent. per ann. on the capital, as contained in section 17 of the Act second (II.) under this title.] Tolls increased (42)

Sect. 9.—[This section is substantially the same as section 18 of the Act first under this title—except that the word *painted* is used in this section in place of the word “printed” in that.] 57 Index posts &c (16,17,18)

Sect. 10.—[This section is substantially the same as section 19 of the Act first under this title—except that in this section the words *injure* or are used before the word “obliterate,” where it first occurs, and in this section before the words *he or they so offending* is this clause “or shall unhang, pull up, break down, or in any manner whatsoever wilfully damage any gate, paling, or post thereto belonging or attached” and also in this section after the words *severally and respectively* is this clause “besides paying the appraised value of every such mile stone, post, index board, gate or paling.”] 58 Injuring index-posts, &c. [18]

Sect. 11.—[This section is substantially the same as section 20 of the Act first under this title, except that after the words “forfeit and pay” there are in this section these words “as well all damages, which may arise from his breach of this provision” over and above what is in that section.] 59 Keeping to the right [19]

Sect. 12.—[This section is substantially the same as section 21 of the Act first under this title; except that in this section after the words *such offence* are these words “the one half to the commissioners of roads in the hundred, in which the forfeiture may be incurred and

60 Unlawful tolls [21]

*the other half to the person who may sue for and recover the same before any Justice of the Peace in New-Castle County."*

61 Vexatious  
suits [22]

Sect. 13.—[This section is substantially the same as section 22 of the Act first under this title.]

62 Limitation  
[23, 24]

Sect. 14.—[This section is substantially the same as section 23 of the Act first under this title.]

63 Inquiry as  
to repairs, &c  
[11, 12, 13, 14]

Sect. 15.—[This section is substantially the same as section 14 of the Act first under this title—except that after the word *freeholders*, where it first occurs, in this section are these words—"not residing within the hundreds of New-Castle or Pencader" and after the words *notice shall be given*, in this section are the words "to the president and managers of the said company in writing at least three days before such meeting"—and after the words *between which such defective place may be*, in this section are these words—"and if the said defective place so pointed out by said Inquisition should not be repaired within the space of fifteen days from such notice being received, then and" and in this section after the word *usually recovered* are these words "and shall be paid to the commissioners of roads of the place or hundred wherein the offence was committed to be applied to the repair of the roads of such hundred" in place of the last clause of said section 14.]

*Passed at Dover, January 20, 1818.*

#### IV.

AN ACT to incorporate a company for making a turnpike road from the borough of Wilmington to the line between this State and Pennsylvania, at or near the house now occupied by Charles T'waddle.

1811

Kennet

64 Corporate  
Name

[By section 2 the subscribers are incorporated by the name of *The Wilmington and Kennet turnpike company.*]

65 Route

[By section 8, the president and managers are authorized to fix "such route for the same road as in the best of their judgment and skill will be most practicable from the borough of Wilmington to the line between this State and Pennsylvania, at or near the house now occupied by Charles T'waddle."]

66 Width &c  
[4]

Sect. 10.—[This section is substantially the same as section 10 of the Act first under this title, varying therefrom in substance only so far as to conform to the route of this road, and with the same proviso.] (5)

67 Public  
worship and  
funeral—no  
toll (5)

Sect. 11.—[This section is substantially the same as section 11 of the Act first under this title.]

68 Licenses  
(6)

Sect. 12.—[This section is substantially the same as section 12 of the Act first under this title—except, that the toll for a score of sheep and of hogs is the same, viz. 6 cents.]

69 Tolls

[7, 8—72, 73]

Sect. 13.—[This section is substantially the same as section 13 of the Act first under this title—substituting in this section the words *Wilmington and Kennet* for the word "Wilmington" in that.]

70 Fines to  
evade toll  
(9, 10)

Sect. 14.—[This section is substantially the same as section 14 of the Act first under this title.]

71 Repairs  
[11, 12, 13, 14]

Sect. 16.—[By this section there cannot be more than one gate for every two miles.]

72 Number of  
gates limited

Sect. 17.—[This section is substantially the same as section 17 of Act second (II.) under this title.] 73 Increase of tolls [42]

Sect. 18, 19.—[These sections are substantially the same as sections 18 and 19 of the Act first under this title.] 74 Index-posts, &c. [15, 16, 17, 18]

Sect. 20.—[This section is the same as section 20 of the Act first under this title, except that in this section the words *five dollars* are used instead of the words "two dollars" in that.] Keeping to the right [19, 20]

Sect. 21, 22, 23.—[These sections are substantially the same as sections 21, 22, 23 of the Act first under this title.] 74 Unlawful tolls, &c [21, 22, 23]

Sect. 26. Any person or persons residing in Christiana hundred (except persons keeping horses or any sort of carriages for hire) shall have a right to contract for the use of the said road for himself and his family by the year; if on application to the president and managers of said road they cannot agree, the parties shall choose each a disinterested freeholder, who if they cannot agree, may appoint a third, who shall determine (any two agreeing) what sum ought to be paid by such person or persons for one year for the use of the said road for himself and family, which sum shall be paid in two equal payments half yearly and in advance. 75 Commutation

[By section 27 it is provided, that if the commissioners of roads for Christiana hundred shall after the year 1820 think proper to purchase the road on behalf of said hundred, they shall apply to the president and managers and company, and if the parties cannot agree for the same, they shall agree upon five or more disinterested freeholders of New-Castle county, who shall examine and estimate the value on oath or affirmation under their hands and seals, and upon payment of the amount, the right shall become vested in the commissioners of roads of Christiana hundred, who shall declare said road free and no further toll shall be collected.] 75 Purchase by comm'ts of roads of Christiana hundred

*Passed at Dover, January 21, 1811.*

## V.

**AN ACT** to incorporate a company for making an artificial road from or near the borough of *Wilmington* in the county of *New-Castle* on the east side of the *Brandywine* creek in the route through *Westchester* to the turnpike roads in the *Great Valley*, in the State of *Pennsylvania*. 1814

West-Chester

[By section 2 the company are incorporated by the name of *The president, managers and company of the Wilmington and Great Valley turnpike company*.] 76 Corporate Name

[By section 8 the route of said road is to be—in, near or from the borough of *Wilmington* to the line of the State of *Pennsylvania* on the east side of the *Brandywine* in *Brandywine* hundred to communicate with or near upon the track of the *Concord* road at the line of the State of *Pennsylvania*.] 77 Route

Sect. 10.—[This section is substantially the same as section 10 of the Act first under this title—and same proviso.] 78 Width, &c (4)

Sect. 11.—[This section is of the same substance as set forth for section 11 of the Act first under this title.] 79 No toll in certain cases [5—91]

Sect. 12.—This section is substantially the same as section 12 80 Tolls [78 [90—79]]

of the Act first under this title—except that the words “and every ass or mule as equal to one horse” are not in this section.]

81 Repairs  
[11, 12, 13, 14]

Sect. 13.—[This section is substantially the same as section 14 of the Act first under this title—except that the last clause following the words “usually recovered in the said county,” in this section is, *and shall be paid to the commissioners of the roads of the place wherein the offence was committed to be applied to repairing such roads as the hundred is bound to repair at the public expense thereof.*]

82 Number of  
gates limited

Sect. 15.—[By this section there cannot be more than one gate for every two miles.]

83 Increase of  
tolls [42]

Sect. 16.—[This section with section 1 of the Supplement is substantially the same as section 17 of the Act second (II.) under this title—except that by this section the surplus above nine per cent. per ann. is to be applied to sinking the capital, until the whole is extinguished.]

Index-posts,  
&c  
(16, 17, 18, 19)  
Keeping to  
the right  
(19, 20)

Sect. 17, 18.—[These sections are substantially the same as sections 18 and 19 of the Act first under this title.]

Sect. 19.—[This section is substantially the same as section 20 of the Act first under this title, except that in this section the words *five dollars* are used in the place of the words *two dollars* in that.]

84 Unlawful  
toll [21]

Sect. 20.—[This section is substantially the same as section 21 of the Act first under this title—except that in this section, after the words “such offence” are these words—*one half to the use of the commissioners of the road in the hundred in which the forfeiture shall be incurred and the other half to the use of the person suing for the same.*]

85 Vexatious  
suits, &c  
[22, 23, 24]

Sect. 21, 22.—[These sections are substantially the same as sections 22 and 23 of the Act first under this title.]

86 Frauds to  
evade tolls  
[9, 10]

Sect. 24. [This section is substantially the same as section 13 of the Act first under this title; except the words “any horse or mule” are in this section omitted—and in this section the words “president, managers and company of the Wilmington and Great Valley turnpike road” are substituted for the words *Wilmington turnpike company* in that section.]

8 Junction of  
of other roads  
(28)

Sect. 26.—[This section restrains the company from preventing any other incorporated company from forming a junction with their road.]

*Passed at Dover, January 23, 1811.*

1816

#### A SUPPLEMENT to said Act.

88 Commuta-  
tion

Section 2. It shall be lawful for any person or persons living in Brandywine hundred and being owner or possessor of meadows, marshes or arable land in the vicinity of the said Wilmington and Great Valley turnpike, to commute, by the year, for the passage of their wagons, teams, carts, cattle, horses, sheep and hogs going to or coming from said lands at the rate of one dollar per mile to be paid in such manner, that a quarterly payment shall be made in advance; and if any person, who has occasion to use the said road, shall deem such sum unreasonable and disproportionate to his use of the said road, the party so deeming himself aggrieved

and the president of the said company shall each choose one disinterested freeholder, who shall decide what reduction, if any, shall be made from the annual payment aforesaid; and in case the two persons so chosen cannot agree, they shall choose a third person, and then the three persons or a majority of them shall decide as aforesaid; or in case the said president shall refuse or neglect to choose a freeholder for the purpose aforesaid for the space of ten days, then the freeholder chosen by the party aggrieved as aforesaid shall decide what reduction ought to be made, which shall be the commutation for the current year.

*Passed at Dover 1 Feb. 1816.*

### AN ADDITIONAL SUPPLEMENT.

1818

Section 2. The president managers and company aforesaid shall not be obliged to complete the remainder of the said road, being about sixty-eight perches, to the Pennsylvania line, until the turnpike road leading from the Great Valley through Westchester to the said line shall be completed; then if the said president, managers and company shall not proceed to carry on and complete the said remainder of sixty-eight perches of the road aforesaid, within one year thereafter, it shall and may be lawful for the Legislature of this State to resume all and singular the rights, liberties, privileges and franchises which by this Act, or the Act to which this is a supplement, are granted to the said company.

89 Part of  
road near  
State line

*Passed Jun. 29, 1818.*

### A SUPPLEMENT to the same Act.

1827

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.

90 Fractions  
of toll

91 Electors  
exempt

*Passed at Dover, January 19, 1827.*

## VI.

1811

AN ACT to incorporate a company for making an artificial road from the town of New-Castle to Clark's Corner.

92 Corporate name

[By section 2 the company is incorporated by the name of *The New-Castle turnpike company.*]

93 The road, width, manner of making, &c.

[By section 7, the president, managers and company are authorized to occupy all the lands within the limits of the road known by the name of the State road, formerly the King's road from the town of New-Castle towards Redlion, as far as the intersection of said road with the Wilmington bridge road at Clark's corner, beginning at the intersection of Delaware and Union streets, and to cause twenty feet thereof in breadth, at least, to be made an artificial road, which shall be bedded with wood, stone, gravel, clay, or other proper and convenient materials well compacted together a sufficient depth to secure a solid foundation for the same; and the said artificial road shall be faced with clay, gravel or stone pounded, or other small hard substance in such manner, as to secure a firm and as nearly as the nature of the country and the materials will admit an even surface rising towards the middle by a gradual arch and shall maintain and keep the same in good order and repair.]

94 Tolls

[By section 8, the company is authorized to collect tolls, to erect gates and to stop any person riding, leading or driving any cattle, hogs, sheep, sulky, chair, chaise, phaeton, coach, coachee, cart, wagon, wain, sleigh, sled or other carriage of burden or pleasure from passing through said gates, until payment—that is to say, the following sums of money, and so in proportion for any greater or less number of hogs, sheep or cattle : to wit, for every score of hogs, three cents ; for every score of sheep, two cents ; for every score of cattle, six cents ; for every horse or mule, laden or unladen, with his rider, two cents ; for every sulky, chair or chaise, with one horse and two wheels, three cents, and with two horses, four and a half cents ; for every chair, coach, phaeton, chaise, stage-wagon, coachee or other wagon, with two horses and four wheels, six cents ; for either of the carriages last mentioned, with four horses, ten cents ; for every other carriage of pleasure under whatever name it may go, the like sums, according to the number of wheels and of horses drawing the same : for every sleigh or sled, one cent for each horse drawing the same ; for every cart or wagon, or other carriage of burthen, the wheels of which do not in breadth exceed four inches, two cents for each horse or ox drawing the same ; for every cart or wagon, the wheels of which shall exceed in breadth four inches, and shall not exceed seven inches, one cent and an half for each horse or ox drawing the same ; for every cart or wagon the breadth of the wheels of which shall be more than seven inches and not more than ten inches, or being of the breadth of seven inches and shall roll more than ten inches, one cent for each horse or ox drawing the same ; for every cart or wagon the breadth of the wheels of which shall be more than ten inches and not exceeding twelve inches, or being ten inches shall roll more than fifteen inches, half a cent for each horse or ox drawing the same.]

Sect. 10.—[This section provides, that if at the end of two 95 Increase years after the road is completed, it shall appear from the average profits thereof for said two years that the clear income will not bear a dividend of six per cent. per ann. on the capital, the president, managers and company are authorized to increase the tolls in equal proportions on every allowance (except commutations) so as to raise the dividends to six and not exceeding nine per cent. per annum.]

Sect. 12. That every person or persons who shall prefer an an- 96 Commuta-  
nual contract for the use of the said road shall be entitled for him-  
self and his family to all the benefits of the same, except as to stages  
for the conveyance of persons for hire, and wagons for conveyance  
of goods, wares and merchandises, for the sum of two dollars to  
to be paid in such manner that a quarterly payment shall always  
be in advance; and if any person or persons who wish to make  
such contract, shall think the said annual contract unreasonable  
and disproportionate to the number of their family and their use  
of the said road, the party so aggrieved and the president of the  
said company intended to be incorporated by this Act, shall each  
choose one disinterested freeholder, who shall decide what reduc-  
tion if any shall be made from the annual payment herein before  
specified; and in case the two persons so chosen cannot agree,  
they shall choose a third person, and then the three persons or a  
majority of them shall decide as aforesaid; or in case the said  
president shall refuse or neglect to choose a freeholder for the pur-  
pose aforesaid for the space of ten days, then the freeholder chosen  
by the party aggrieved as aforesaid shall decide what reduction  
ought to be made, which shall be the commutation for the current  
year.

Sect. 14.—[This section is substantially the same as the first 97 repairs  
part of section 14, of the Act first under this title—to wit, as far  
as the words “shall be put into good and perfect order and re-  
pair as aforesaid” inclusive, but all the subsequent parts of said  
section are omitted from this.] (11, 12)

Sect. 16. The corporation intended to be created by this Act 98 Provision  
shall cease when and as soon as the hundred of New-Castle, or  
the inhabitants of the town of New-Castle shall pay to the said  
company the amount of the money, which may be expended for  
the improvement of the said road, unless purchased as is directed  
in the eleventh section of this Act: *provided always*, that no pay-  
ment shall be made of more than one moiety of the sum so ex-  
pended at the expiration of five years from the time when the said  
company shall commence receiving tolls, and the other moiety at  
the expiration of ten years from the time aforesaid: *And provided*  
*always*, that after the expiration of ten years from the time of re-  
ceiving tolls, if no part of the sum expended as aforesaid shall be  
paid, then the whole or a moiety thereof may be paid at the expi-  
ration of any term of five years thereafter and not otherwise.

Sect. 17.—[This section is substantially the same as set forth 99 Prohibition  
for section 29 of the Act first under this title.] from prevent-  
ing junction

Sect. 18.—[By this section provision is made for the commis-  
sioners of the roads of New-Castle hundred to subscribe, &c.] (28)

Sect. 19.—[This section is substantially the same as section 21 100 Purchase  
101 Unlawful  
tolls (21,



of the Act first under this title; except that after the word "offence," in this section are these words *one half to the use of the commissioners of the roads in the hundred of New-Castle, and the other half to the use of the person suing for the same.*]

102 Vexatious  
prosecutions  
(22)

Sect. 20.—[This section is substantially the same as section 22 of the Act first under this title; except, that after the words "the judgment of the Justice," in this section are these words *or the court: and the words "or by action in the Court of Common Pleas of New-Castle county aforesaid, if such prosecution had been instituted before the Court of General Quarter Sessions of the Peace" are not in this section.*]

103 Limitat'n  
(23)

Sect. 21.—[This section is the same as section 23 of the Act first under this title.]

104 Keeping  
to the right  
(19, 20)

Sect. 22.—[This section is the same as section 20 of the Act first under this title—except that in this section the words *five dollars* are used in place of the words *two dollars* in that.]

*Passed at Dover, January 30, 1811.*

1814

#### SUPPLEMENT to said Act.

Section 4.—[This section is substantially the same as section 13 of the Act first under this title—the word "New-Castle" being in this section substituted for the word *Wilmington* in that.]

105 Injuries  
to company

Sect. 11. If any person or persons shall cut, damage or destroy any of the gates or improvements made or to be made by the New-Castle turnpike company, he, she or they so offending and being thereof convicted before any Justice of the Peace of New-Castle county, upon the oath or affirmation of one or more credible witness or witnesses, shall forfeit and pay, over the damage done, the sum of thirty dollars to be recovered under the hand and seal of the Justice, before whom such conviction was had, to and for the use of the New-Castle turnpike company.

*Passed February 12, 1814.*

#### VII.

1813

Philadelphia

**AN ACT** to incorporate a company for making an artificial road from the borough of *Wilmington* on the east side of *Brandywine* bridge to the *Pennsylvania* line in the route leading to the city of *Philadelphia*.

106 Corporate  
name

[By section 2 the company is incorporated by the name of *The Wilmington and Philadelphia Turnpike Company.*]

107 Width &c  
(4)

108 No toll in  
certain cases  
(5)

Section 10.—[This section is substantially the same as section 10 of the Act first under this title, and same proviso, except that in respect to the width of this road the words "nor less than sixty" are added.]

109 Licenses  
(6)

Sect. 11.—[This section is substantially the same as section 11 of the Act first under this title.]

110 Tolls  
[7, 8—108, 120]  
Increased  
[110—119]

Sect. 12.—[This section is substantially the same as section 12 of the Act first under this title; except that the toll for a score of sheep as well as of hogs is six cents, and for *twelve cents* in two places in that section, the sum is *twelve and one half cents* in this.]

Sect. 13.—[This section is substantially the same as section 13 of the Act first under this title, substituting in place of the word *Wilmington* in that section the words *Wilmington and Philadelphia* in this.] 111 Frauds to evade tolls (9, 10)

Sect. 14.—[This section is substantially the same as section 14 of the Act first under this title; except that in the proviso, the word *fifteen* is used in this section for the word *twenty* in that.] 112 Repairs (11, 12, 13, 14)

Sect. 16.—[By this section there cannot be more than one gate for every two miles.] Number of gates limited

Sect. 17.—[By this section it is provided that the president and managers shall at the end of every third year from the date of their incorporation until two years after the whole road shall be completed, lay before the General Assembly an abstract of their accounts showing the whole amount of capital expended, and of the income from the tolls with an abstract of the costs of keeping the road in repair and all contingent charges, and shall at the end of every ten years after the said road is completed render to the General Assembly a like abstract of their accounts for three preceding years.] 113 Accounts for General Assembly [117]

Sect. 18, 19, 20, 21, 22, 23.—[These sections are the same in substance as sections 18, 19, 20, 21, 22, 23, of the Act first under this title; except that in section 20 the words *five dollars* are used in this Act in place of the words *two dollars* in that.] 114 Index-posts, unlawful toll, &c. (15—24)

Sect. 27. Every person, who shall prefer an annual contract for the use of the said road, shall be entitled for himself and family to all the benefits of the same, for one dollar per mile annually, to be paid in such manner as that a quarterly payment shall always be in advance; and if any person or persons, who wish to make such contract, shall think such annual contract unreasonable and disproportionate to the number of their family and their use of the said road, the party so aggrieved and the president of the said company intended to be incorporated by this Act, shall each choose one disinterested freeholder, who shall decide what reduction, if any, shall be made from the annual payment herein before specified; and in case the two persons so chosen cannot agree, they shall choose a third person, and then the three persons or a majority of them, shall decide as aforesaid: or in case the said president shall neglect or refuse to appoint a freeholder for the purpose aforesaid, for the space of ten days, then the freeholder chosen by the party aggrieved as aforesaid, shall decide what reduction ought to be made, which shall be the commutation for the current year. 115 Commutation [118]

Passed February 1, 1813.

# AN ADDITIONAL SUPPLEMENT to said Act.

1318

Whereas the president and managers of the said turnpike company have at considerable expense completed the road authorized by the Act, to which this is an additional supplement; and whereas it appears to this General Assembly from the abstract of the expenditures, income and profits of the same, they have been obliged to pledge the whole of the stock and income to obtain money to complete the said road.

116 Increase  
of tolls

Section 1. It shall and may be lawful for said president, managers and company to increase the tolls allowed by the Act, to which this is an additional supplement, except as to commutation, in equal proportions upon each and every allowance thereof, so as to raise the dividends up to six per cent. per annum : and if it shall appear by any such abstract of the accounts of the said corporation to be laid before the General Assembly, as is required by said original Act, that the clear profits of said company have exceeded on an average nine per cent. per annum upon the capital stock for ten years preceding, then and in such case the said toll shall be so reduced, as to reduce the said dividend down to nine per cent. per annum.

117 under  
what circum-  
stances di-  
minished118 Commu-  
tation in cer-  
tain cases

Sect. 2. In all annual contracts, hereafter to be entered into, for the use of the said road, by any person for himself or herself and family the same shall not extend to heavy wagons or carts employed for carrying wood and other heavy articles to market : but if the owner of such team wish to contract by the year, he shall have the right so to do, by application to the present managers of said road; and if they cannot agree, the said parties shall choose each a disinterested freeholder, who, if they cannot agree, may appoint a third, who shall determine (any two agreeing) what sum shall be paid by such person or persons for one year for the use of the said road for such heavy wagons or carts as aforesaid, which sum shall be paid in four equal quarterly payments in advance.

*Passed at Dover, 29 January, 1818.*

1827

### A FURTHER SUPPLEMENT to said Act.

119 Fractions  
of toll

Section 1. 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.

120 exempt'd  
from toll

*Passed at Dover, February 2, 1827.*

### VIII.

1813

[Elkton

AN ACT to incorporate a company to make an artificial road or turnpike from Christiana bridge in the county of New-Castle in this State to the Maryland line in a direction towards Elkton.

121 Corporate  
Name

(By section 4 the company is incorporated by the name of the *Elk and Christiana turnpike company.*)

(By section 6, the road is to be opened from Christiana bridge to Elk landing, &c. not more than sixty-six feet wide, twenty feet in width of which shall be bedded with stone, gravel or other hard substance.)

[Section 7 adopts the

*"ACT to incorporate a company for making an artificial road from the town of New-Castle in New-Castle county to the line of this State in the route or direction to Frenchtown on Elk river in Cecil county in the State of Maryland."*]

(The said Act was afterwards repealed; but it is supposed, that by this repeal it did not cease to be a part of this Act into which it was thus adopted. The following sections of said Act are presumed therefore to apply.)

Section 10.—(This section is substantially the same as section 10 of the Act first under this title, with same proviso.)

Sect. 12.—(This section is in substance the same as section 12 of the Act first under this title, with this addition: *"Provided always, That it shall not be lawful for the said turnpike company to erect or cause to be erected any toll gate or gates on either of the roads leading through New-Castle county, over which the said turnpike road shall pass, any thing in this Act to the contrary notwithstanding."*)

Sect. 13.—(This section is substantially the same as section 14 of the Act first under this title; except that after the words "usually recovered in said county," are these words in this section *and shall be paid to the commissioners of the roads of the place where in the offence was committed.*)

Sect. 15.—(By this section there can not be more than one gate for every five miles.)

Sect. 16.—(This section is substantially the same as section 17 of the Act Second (II.) under this title.)

Sect. 17, 18.—(These sections are substantially the same as sections 18, 19, of the Act first under this title; except that in this section before the words *twenty dollars* are the words *not exceeding.*)

Sect. 19, 20.—(These sections are the same in substance as sections 20, 21, of the Act first under this title; except that in section 20 of this Act after the words *such offence* are these words *one half to the commissioners of the roads in the hundred in which the forfeiture shall be incurred, and the other half to the use of the person suing for the same.*)

Sect. 21, 22.—(These sections are substantially the same as sections 22, 23, of the Act first under this title.)

Sect. 24.—(This section provides for the Legislature taking the road after 1831, and paying amount, if deemed proper.)

Sect. 26.—(This section is substantially the same as section 29 of the Act first under this title.)

122 Width of the road

123 Construction  
124 No toll in certain cases

125 Tolls  
(7, 8—124)

126 Repairs  
(11, 12, 13, 14)

Number of gates limited

127 Increase of tolls (42)

128 Index-boards, &c.  
(15—18)

129 Unlawful toll, &c.  
(19—21)

130 Vexatious suits, &c.  
(22—23)

131 Legislature may take the road [28]  
132 Junction of other road

Passed at Dover, April 14, 1818.

## AN ACT SUPPLEMENTARY to said Act.

133 [III]  
Adopted  
(49-52)

Section 1. The Act entitled "An additional Supplement to an Act entitled An Act to incorporate a company for making an artificial road from the town of New-Castle in New-Castle county to the line of this State, in the route or direction towards Frenchtown on Elk river in Cæcil county in the State of Maryland," and all and every section, clause and provision therein contained are hereby declared and enacted to extend to and be incorporated with the Act entitled "An Act to incorporate a company to make an artificial road or turnpike from Christiana bridge in the county of New-Castle in this State, to the Maryland line in a direction towards Elkton," changing or varying what in the said sections, clauses and provisions contained in the said first mentioned law ought to be changed or varied, in order to render the same applicable and suitable as part of the same last mentioned Act: *provided*, that wagons, carts and other carriages of burden for the conveyance of goods, wares and merchandise, including wood and other timber intended in any way for sale, shall be and are hereby declared and enacted to be excepted out of the commutation-provisions contained in section five of the said first mentioned supplementary Act: *provided further*, that the owners of such wagons, carts and other carriages of burden conveying cord wood for sale, shall be entitled to a discount of twenty-five per centum from the rate of tolls allowed by law, the said company having agreed thereto.

134 commuta-  
tion regulated  
(50)

135 Tolls at  
Cooch's  
bridge

Sect. 2. The president, managers and company of the Christiana and Elkton turnpike shall have power and are hereby authorized to demand and receive for passing the bridge erected by the said company over the Christiana creek and called and known by the name of Cooch's bridge, from Middletown towards the village of New-Ark, or from New-Ark in a direction towards Middletown, one third of the rate of toll allowed for five miles of said turnpike road, by their Act of incorporation: *provided always*, that the Elk and Christiana turnpike company shall at all times keep and maintain a good and sufficient bridge over the Christiana creek at the place aforesaid; and in case the said bridge shall not be kept in good order and repair, the same provisions, as relate to the repair of the said turnpike, shall be and are hereby extended to the said bridge.

*Passed at Dover, 1 February, 1816.*

## IX.

1815  
Christiana

AN ACT to incorporate a company for making an artificial turnpike road from the borough of Wilmington to the village of Christiana in New-Castle county.

136 Corporate  
name

(By section 2 the company is incorporated by the name of *The President, managers and company of the Wilmington and Christiana turnpike road.*)

137 Width  
(4)

137 No toll  
from certain  
persons (5)

Section 10.—(This section is substantially the same as section 10 of the Act first under this title except that the word *wood* is not in this section, and similar proviso.)

Sect. 11.—(This section provides for Licenses, to be granted by the Chief Justice of the Supreme Court to take toll, upon report to him, &c.)

Sect. 12. The said company having perfected the said road or such part thereof from time to time as aforesaid, and the same being examined, approved and licensed as aforesaid, it shall and may be lawful for them to appoint such and so many toll-gatherers, as they shall think proper, to collect and receive of and from all and every person and persons using the said road the rates and tolls hereinafter mentioned, and to stop any person riding, leading or driving any horse or mule, or driving any cattle, hogs, sheep, sulky, chair or chaise, phaeton, cart, wagon, wain, sleigh, sled or other carriage of burden or pleasure from passing through the said gates or turnpikes, until they shall have respectively paid the same; that is to say, for *every space of one mile in length* of the said road, the following sums of money, and *so in proportion* for any greater or less distance, or for any greater or less number of hogs, sheep or cattle; to wit: for every score of hogs or sheep, one and a half cents; for every score of cattle, three cents; for every horse or mule laden or unladen with his rider, one cent; for every sulky, chair or chaise with one horse and two wheels, one cent and a half, and with two horses, two cents; for every chair, coach, phaeton, chaise, stage-wagon, coachee or other wagon with two horses and four wheels, three cents; for either of the carriages last mentioned with four horses, five cents; for every other carriage of pleasure, under whatever name it may go, the like sums according to the number of wheels and of horses drawing the same; for every cart or wagon or other carriage of burden, the wheels of which do not exceed in breadth four inches, one cent for each ox or horse drawing the same; for every cart or wagon, the wheels of which shall exceed four inches in breadth and shall not exceed seven inches, three-fourths of a cent for every ox or horse drawing the same; for every cart or wagon the wheels of which shall be more than seven inches and not more than ten inches, or being of the breadth of seven inches, shall roll more than ten inches, one half cent for each ox or horse drawing the same; for every cart or wagon the wheels of which shall be more than ten inches in breadth, or being ten inches shall roll more than fifteen inches, one fourth of a cent for each horse or ox drawing the same.

Sect. 13.—(This section is substantially the same as the first part of section 14 of the Act first under this title; to wit: as far as the words "until the said defective part or parts of said road shall be put into good and perfect order and repair as aforesaid," inclusive; but all the subsequent parts of said section are omitted from this.)

(By section 15 there can not be more than one gate for every three miles.)

Sect. 16.—[This section provides, that if, at the end of two years after the said road shall be completed, it shall appear from the average profits thereof for said two years, that the clear income will not bear a dividend of nine per cent. per ann. on the capital stock, the president, managers and company are authorized

139 Toll-gatherers

140 Tolls (143)

141 Repairs (11-12)

142 Gates limited

143 Increase of tolls

to increase the tolls in equal proportions on every allowance, except commutations, so as to raise the dividends to nine per cent. per annum.]

144 Index-  
posts, &c.  
[15, 16, 17, 18] Sect. 17, 18.—[These sections are substantially the same as sections 18 and 19 of the Act first under this title; except that in section 18 of this Act the words *not exceeding* are inserted before the words "twenty dollars."]

145 Keeping  
to the right &c  
[19] Sect. 19.—[This section is substantially the same as section 20 of the Act first under this title; except that in this section the words *twenty dollars* are used in place of the words "two dollars" in that.]

146 Unlawful  
toll [21] Sect. 20. [This section is substantially the same as section 21 of the Act first under this title; except that in this section after the words *every such offence*, are inserted these words *one half to the commissioners of roads in the hundred in which the forfeiture shall be incurred and the other half to the use of the person suing for the same.*]

147 Vexatious  
suits, &c  
[22-23] Sect. 21, 22.—[These sections are substantially the same as sections 21 and 22 of the Act first under this title.]

147 Junction  
(28) Sect. 25. [This section is substantially the same as set forth for section 29 of the Act first under this title.]

148 Frauds to  
evade toll  
[9] Sect. 26.—[This section is substantially the same as section 13 of the Act first under this title, substituting *Wilmington and Christiana* for "Wilmington."]

Commutation  
[50] Sect. 27.—[This section is substantially the same as section 5 of the Supplement third (III) under this title, except that in this section after the word *disinterested* is used the word *freeholder* in place of the word *person* in that section, and also after the words *choose a* and before the word *chosen* the word *freeholder* is used in this section in place of the word "person" in that, and also in this section the words *ten days* are used in place of the words "five days" in that.]

Sect. 29.—[This section is substantially the same as section 17 of the Act seventh (VII.) under this title.]

Passed at Dover, January 30, 1815.

—o—

## VACANT LANDS.

### I.

1793

#### AN ACT concerning vacant and uncultivated lands.

Whereas the minds of the good people of this State are much alarmed and disquieted by warrants for surveying lands being issued without the authority of the State; and it appears that the peace thereof will be greatly disturbed by such proceeding: Therefore for preventing the evil consequences thereof—

Section 1. If any person or persons inhabitants of this State shall, after the passing of this Act, take or receive any warrant, or shall make or cause to be made any survey in consequence of such warrant, or shall take or receive any grant, deed, indenture

1 Taking  
Warrant or  
making sur-  
vey of land,  
except under

or other writing from any person or persons not acting under the authority of this State, for any vacant and uncultivated lands in this State, the person or persons so offending shall forfeit and pay for every such offence the sum of one hundred dollars to be recovered in any Court of General Quarter Sessions of the Peace and Gaol Delivery.

authority of  
State  
[47]

Sect. 2. [No warrant issued since the fourth day of July, one thousand seven hundred and seventy-six, shall be laid or surveyed by any surveyor; nor any patent granted, or deed received, on any warrant or survey, either issued or made since the fourth day of July aforesaid, under the penalty of one hundred dollars for each and every such warrant, survey, patent, or deed, to be recovered as aforesaid.]

2 No Warrant  
issued since  
4 July, 1776.  
laid—  
altered  
[13, 14, 19]

*Passed February 2, 1793.*

## II.

*AN ACT for opening and establishing a Land Office within this State and for the sale of all vacant and uncultivated lands therein.* 1793

Whereas it appears to this General Assembly, that large quantities of vacant and uncultivated land are within this State, which at the present do not, and heretofore have rendered no support to government: Wherefore,

Land-Office

Section 1. The Governor shall commissionate in each county some Surveyor of skill and integrity: and it shall and may be lawful for any person or persons to apply to the Recorder of deeds in each county, who is hereby directed and required to issue a special warrant under his hand and the seal of office, directed to the Surveyor of the county, authorizing him to survey and locate the land or lands therein mentioned and to return a plot thereof, which shall contain the courses and distances of the several lines thereof, a description of the boundaries, creeks, branches and rivulets surveyed or lying within the lines of the said plot, the names of the owners of the contiguous or adjoining lands and the quantity of land thereby surveyed, to an examiner to be appointed and commissioned by the Governor; which said plot as above described shall be returned within six months after the date of such warrant to the examiner as aforesaid, who shall examine the same, and if it be imperfect, shall return it to the said Surveyor for amendment; but if the same shall not be returned for amendment but be approved by the examiner, which approbation shall be certified on the said plot, signed by the examiner, and returned by him together with the plot to the said Recorder who shall upon payment of the purchase money to the State Treasurer and a receipt produced as is hereinafter directed, make a grant and present the same to a Board of commissioners in each county, consisting of three suitable persons to be appointed by the Governor for the time being for their approbation, and being attested by them, and signed by the Governor for the time being, the seal of the State shall be annexed thereto.

3 Surveyors

4 Warrants  
[10-40-17]

5 Examiner  
[32]

6 return to  
Recorder

[22-23-80]

7 Board of  
Commissioners—  
caveat

Sect. 3. *And whereas* disputes may arise between the inhabitants on the location of lands as aforesaid: whenever different



- claims or pretensions may arise, or any caveat shall be entered before the Recorder against any warrant and survey at any time, before the same shall be certified to the State Treasurer as aforesaid, it shall and may be lawful for the aforesaid Board of commissioners, upon notice of such caveat having been given ten days previous to the sitting of the said Board to the person or persons in whose favor such warrant and survey was made, to hear and determine all matters in variance in a summary way according to the laws of the land and equity and good conscience; and such determination shall be entered as of record by the said Board. *Provided*, That in all cases a preference shall be given to such person or persons, as have lands contiguous to or adjoining such vacant or uncultivated and other lands, and to all persons who may have settled any lands not included or held under any warrant issued previous to the first of January, one thousand seven hundred and ninety-two, in case such person or persons shall apply for warrants within six months after the appropriation of such lands as aforesaid to the use of the State; and in case two or more shall have adjoining or contiguous lands as aforesaid, then the said Board shall do what to them seems equitable and right; and no warrant shall issue to any one person for any greater quantity than two hundred acres of land.
8. jurisdiction [34]
- 9 preference
- 10 limitation of quantity
- 11 Record books
- 12 Variation of compass
- 13 Warrants issued between 1 Jan. 1776—& 1792 [2-19]
- Sect. 4. The Recorders in the respective counties of this State shall at their own expense procure record books well bound and of good paper, wherein shall be recorded the warrants issued, the surveys made thereon and returned with the certificate of the examiner, the grants made in consequence of such surveys, all caveats entered before the Recorder, with the determination of the Board of commissioners thereon.
- Sect. 7. The variation of the compass shall in all cases be according to the usage and custom heretofore practiced in the different parts of the State; and all grants made by virtue or under the authority of this Act shall convey to the grantee or grantees an estate in fee simple.
- Sect. 9. The Recorder in each county shall have—
- For every caveat entered, ten cents.  
 Every copy thereof, under seal, forty cents.  
 Every final determination, twenty cents.  
 Filing every survey, ten cents.  
 Every grant made out and ready for signing, fifty cents.  
 Recording every warrant, survey, certificate, grant, caveat, and final determination, one cent for every line of twelve words.  
 And the Surveyor shall have for every plot, two dollars, and every day's attendance in surveying, two dollars.  
 And the Examiner shall have for every plot examined, fifty cents.  
 Every certificate thereof, twenty cents.  
 And the State Treasurer shall have for every receipt, fifty cents.  
 Which said fees shall be paid by the party, at whose request the said services are done.
- Sect. 10. Nothing in the Act entitled *An Act concerning vacant and uncultivated lands* shall be construed to extend to vacate or annul any warrant issued since the first day of January, 1776, and before the first day of January, 1792, nor any survey, patent,

deed, or grant made or obtained thereon between the times aforesaid.

Sect. 11. The title to any lands in this State held under any grant, warrant, survey, re-survey or patent made or issued between the said first day of January, 1776, and the first day of January, 1792, shall be good and available in law and equity. 14 Confirmation of such grants [19]

*Passed June 19, 1793.*

**A SUPPLEMENT** to an Act, entitled, *An Act for opening and establishing a Land Office within this State, and for the sale of all vacant and unlocated lands therein.* 1794

Whereas the right to the soil and lands within the known and established limits of this State was heretofore claimed by the crown of Great Britain: *And whereas* by the definitive treaty between his Britannic Majesty and the United States of America, his said Majesty relinquished all rights, proprietary and territorial, within the limits of the said United States to the citizens of the same, for their sole use and benefit; by virtue whereof the soil and lands within the limits of this State became the right and property of the citizens thereof, and who at the time of passing the Act, to which this is a supplement, had and now have full power and authority by their Representatives to dispose of the same for their sole benefit, emolument and advantage; *And whereas* the claims of the late and former pretended proprietaries of this State to the soil and lands contained within the same, are not founded either in law or equity; and it is just, right and necessary, that the citizens thereof should be secured in the enjoyment of their estates, rights and properties:— 15 Rights to the soil of this State

Section 1. All patents, warrants and grants for lands within this State, made or granted by James heretofore Duke of York, the proprietaries of Maryland, or the pretended proprietaries of this State, or their or any of their agents, officers or commissioners duly authorized to grant lands within the same, at any time before the first day of January, in the year of our Lord one thousand seven hundred and sixty, and all surveys made in pursuance of any such patents, warrants or grants shall be, and at all times hereafter shall be deemed and taken to be, good and valid both in law and equity, fully, clearly and absolutely exonerated, discharged and exempted of and from all manner of rents, fines and services whatsoever; and the said patents, warrants and grants so fully, clearly and absolutely exonerated, discharged and exempted are hereby ratified, confirmed and established forever, according to such estate and estates, rights and interests and under such limitations and uses, as in and by the said patents, warrants and grants, are expressed, directed and appointed, and no other. 16 Confirmation of grants &c. prior to Jan. 1769 (17)

Sect. 2. Any person or persons legally claiming any lands within this State under any warrant or grant issued or made before the first day of January in the year of our Lord one thousand seven hundred and sixty aforesaid, for which lands no patent hath yet been issued, are hereby declared to be entitled to a patent for the same on proceeding in the same manner hereinafter directed 17 Patent pursuant—

18 Priority of  
rights—not  
affected

to procure patents for other lands under this Act, without paying any sum or sums of money for the same, other than the legal fees to the several officers, through whom such patent is to be procured: *provided* that no patent to be issued under this Act for any lands held under any warrant or grant made or issued before the said first day of January in the year aforesaid shall operate so as in any manner to invalidate or take away the right of any person or persons holding lands under any warrant or grant prior in date to the warrant or grant, under which such patent shall be issued.

19 Patent (30)  
pursuant to  
Warrants is-  
sued between  
1760 & 1792—  
(14—25)

Sect. 3. Where any warrants have been issued since the first day of January in the year of our Lord one thousand seven hundred and sixty, and before the first day of January, one thousand seven hundred and ninety-two and the terms of such warrants have not been complied with by the persons, to whom such warrants were granted, it shall and may be lawful for any person or persons legally claiming under any such warrants to apply to the commissioners appointed or to be appointed under the Act to which this is a supplement, for a certificate specifying the quantity of land, which the person so applying shall be permitted to hold under such warrant, and upon paying to the State Treasurer the sum of fourteen dollars for every hundred acres contained in such certificate and producing a receipt therefor from the said Treasurer, to the Recorder of deeds for the county, in which the lands lie, the said Recorder shall make out a patent for the said land, in which patent the State of Delaware shall be the grantor and the person or persons named in such certificate shall be the grantee or grantees; which patent being produced to the Governor of this State, he shall sign the same and cause the seal of the State to be affixed thereto; and every patent made in pursuance of this Act and authenticated in manner aforesaid shall convey to the person or persons named as the grantee or grantees therein and to his, her and their heirs as assigns an absolute and unconditional estate in the land mentioned in such patent.

20 purchase  
money

21 effect of  
patent (30)

32 Lists of  
Warrants and  
Surveys

Sect. 4. The Recorder in each county shall in the month of November annually make out a list of all warrants by him granted, and the surveys made in pursuance of such warrants and returned to his office, containing the names of the person or persons in whose favor the same have issued, the date of the warrant, the date of the survey and the quantity of land contained in such survey, and transmit the same to the State Treasurer; and in case any person, in whose favor any such warrant hath issued or shall issue, shall within two years (*a*) after the date of such warrant pay or cause to be paid to the State Treasurer the sum of fifty dollars for every hundred acres and in proportion for any greater or lesser quantity of land in such survey, he shall be entitled to a patent for the same; but if any person, who heretofore hath or hereafter may obtain a warrant under this or the Act, to which this is a supplement, shall not pay the money for such land within the time aforesaid, such land shall still be deemed vacant and un-

33 Purchase  
money and  
time of pay-  
ment

(a)  
(30)

(a) This time was extended by Act of Feb. 7, 1795, for one year, and by sect. 5, of Act of Feb. 9, 1796, for another year.

appropriated ; and it shall and may be lawful for any other person or persons to apply to the State Treasurer at any time after the expiration of two years (a) from the date of such warrant, and upon paying the money for the quantity of land mentioned in such survey at the rate aforesaid such other person shall be entitled to a patent for such land.

24 failing to pay—  
patent to another paying

Sect. 5. The proprietary warrants granted to survey lands to the use of the proprietor, shall not be deemed grants for the quantities of land in the said warrants mentioned, but shall be deemed and taken to be applications for land made by the person or persons in such warrants mentioned ; but all surveys made or to be made in pursuance of such warrants shall be subject to be caveatd before the Board of commissioners appointed under the Act, to which this is a supplement ; which said commissioners shall hear and determine on all such caveats in such manner, that no survey made or to be made in pursuance of any such proprietary warrant shall deprive the owners of lands held under any patents or other warrants of the privilege of taking up and securing such quantity of land adjoining such patents or other warrants, as will make up to such patents or other warrants the quantity of two hundred acres, including the land held under such patents or other warrants ; and so also that no survey made in pursuance of such proprietary warrants shall include any improvement made by any other person before the date of such survey and such quantity of land adjoining such improvement, as added to the same, will make two hundred acres ; and after all caveats against the confirmation of such surveys shall be determined, the said commissioners shall give to the person or persons legally claiming under such proprietary warrants a certificate specifying the courses and distances of the lines including the lands such person or persons shall be permitted to hold under such proprietary warrants ; and the person or persons obtaining such certificate shall be entitled to patents for the lands contained in such certificate, on paying to the State Treasurer for the use of the State the sum of fifty cents for every acre thereof : *provided*, that no survey made in pursuance of any such proprietary warrants shall be permitted to invalidate or in any wise call in question any person or person's title to any patent or other warrant, included within the bounds of such proprietary warrant, either prior or subsequent to the date thereof, nor to include more than two hundred acres of land for every person named in any such warrant ; and the residue of the quantity of land mentioned in such proprietary warrant, if any, shall be deemed vacant and unappropriated land.

25 Effect of certain Proprietary Warrants

26 & surveys

27 Patents—  
pursuant

28 rights saved

Sect. 6. *And whereas* former proprietaries of the late province but now State of Maryland, for the purpose of having lands improved have heretofore made leases to persons for life or lives for lands then within the jurisdiction of Maryland aforesaid, but now within the established limits of the State of Delaware ; which leases have in many instances expired by the death of the person or persons, for whose life or lives the same were at first made : The heirs or other legal representatives of such lessees shall be entitled to the preference of warrants and patents for all such leased lands upon the terms expressed in this Act for unappropriated lands.

29 Leases for life—Maryl'd grants

(16,17,19,27)

30 Patent

Sect. 7. Patents made pursuant to this Act shall run in the following manner :

*The State of Delaware to all to whom these presents shall come, greeting: Know ye, That for and in consideration of the sum of*  
*paid into the treasury of this State by A. B. of*  
*county, there is granted unto him the said A. B. a certain tract of land*  
*situate in*                      *county, containing*                      *acres* [describing particularly, in words at length, the courses and distances of the several lines, and the boundaries thereof,] *with the appurtenances: to have and to hold the said tract of land, with the appurtenances, to him the said A. B. his heirs and assigns forever, as his and their absolute and unconditional estate and property, free and clear of all reservation of rents or services whatsoever. In testimony whereof*  
*esquire, Governor, hath hereunto set his hand, and*  
*caused the seal of the State to be affixed, the*                      *day of*  
    *in the year of our Lord,*                      *and in the*  
*of the Independence of the said State.*                      *year*

31 Recorded

Sect. 8. All patents granted in pursuance of this Act, shall be recorded in the office for recording of deeds for the county in which the lands granted by such patents respectively lie; for the recording of which said patents, the respective Recorders of deeds in this State shall be allowed the like sum as for recording deeds of the same length, and for an indorsement of such patent being recorded and his hand and seal of office thereto, the same sum as in other cases of the like nature.

32 Sitting of  
commissioners  
(45)

Sect. 9. The commissioners appointed or to be appointed under the Act, to which this is a supplement, shall set at the Court House for the county in which they reside, on the first Tuesday of April next, and on their own appointments at all times thereafter, for the purpose of discharging the duties enjoined on them by this and the before recited Act; but before they enter on the said duties, each of them shall take an oath before the prothonotary, or the clerk of the Supreme Court in the respective counties of State,  
*That he will to the best of his skill and judgment, faithfully and impartially discharge the trust in him reposed by an Act of Assembly entitled An Act for opening and establishing a Land Office within this State, and for the sale of all vacant and uncultivated lands therein and the supplement thereto, without fear, favor or affection or any partiality whatever; and each of the said commissioners shall be allowed the sum of two dollars for every day's*  
 attendance.

Fees

[13]

34 Appeal

Sect. 10. If any person shall consider him, her or themselves aggrieved by any determination of the Commissioners appointed or to be appointed as aforesaid, it shall and may be lawful for such person or persons to appeal from the determination of the said commissioners to the (c) High Court of Errors and Appeals, whose determination shall be binding and final and conclusive to all parties.

35 Examiner  
(5)

Sect. 11. The Governor shall appoint some fit person in each

(c) By sect. 6, of the preceding Act this Appeal was to the Supreme Court. And by sect. 3, of an Act of Jan. 24, 1797, (VI.) all appeals must be "brought before and entered of record in said" High Court of Errors and Appeals "within one year from taking the said appeal, or otherwise shall be void."

county respectively an Examiner, whose duty and compensation shall be the same as is directed to the examiner in the Act to which this is a supplement.

Sect. 12. All the streets of the town of Lewes, and the bank and marshes between Front street and Lewes creek, and between South street and Canary creek, which have heretofore been considered as common and public property, shall not be subject to be taken up any warrant to be issued in pursuance of this Act or the Act, to which this is a supplement, but shall from and after the passing of this Act be vested in the inhabitants of the town of Lewes and the citizens of this State in general for their common use and benefit; and all warrants already issued to take up any part of the said streets, bank or marshes, are hereby vacated and made void; and the said streets shall be and remain open as common highways under such regulations as other highways in this State; and if any person shall in any manner obstruct the said streets or highways, he shall forfeit and pay the same sum as by law he would forfeit and pay for obstructing any other highway within this State to be recovered in the same manner that such forfeitures by the laws of this State are directed to be recovered.

36 Streets in  
Lewes, banks  
& marshes  
between  
Front st. and  
Lewes creek

(Roads, &c.  
40)

*Passed February 7, 1794.*

**AN ADDITIONAL SUPPLEMENT** to the Act entitled *An Act for opening and establishing a Land Office within this State, and for the sale of all vacant and unlocated lands therein.* 1796

Whereas the former Proprietaries of the late province now State of Maryland have heretofore granted qualified or conditional estates in fee in lands then within the jurisdiction of the government of Maryland, but now within the limits of this State; which said estates have been determined by their own limitations: And whereas the said lands have descended or been aliened and held for a great space of time without any interruption to the possessors, and have been always considered as the absolute property of the holders thereof and as such have been taxed and otherwise subjected to their proportions of the public charges:—

37 Qualified  
estates  
Maryland  
grants

Section 1. The heirs, devisees, grantees, bargainees or other legal representatives of such original grantees shall respectively be entitled to the preference of patents upon any warrant or warrants already issued or of warrants and patents to be issued and had for the whole quantities of land respectively held by such original grantees or by their heirs, devisees, grantees, bargainees or other legal representatives and contained in their grants; and every such person having already obtained or who shall hereafter obtain such warrant shall pay to the State Treasurer the sum of fourteen dollars for every hundred acres contained in such warrant, and in the certificate thereupon returned and according to that rate for any less quantity; and such proceedings shall and may be had in securing the said lands and obtaining a title thereto, as are prescribed and allowed in the Act, to which this is a supplement, and in the Act entitled *A supplement to an Act for opening and establishing a Land Office within this State and for the sale of all vacant and unlocated lands therein*; and if any person or per-

38 preference  
(39)

39 for what  
time

sons, who by this Act is or are entitled to the perference of warrants and patents for such lands, shall not take the benefit of this Act within one year from the date hereof and pay the money for such land or lands within one year from the date hereof, such lands shall be still deemed vacant and unappropriated and liable to the warrants and proceedings of other persons in manner and form and upon the terms prescribed for taking up and securing other vacant and unappropriated lands.

*Passed February 9, 1796.*

1807

**AN ADDITIONAL SUPPLEMENT** to the Act entitled "*An Act opening and establishing a Land-Office within this State and for the sale of all vacant and uncultivated lands therein.*"

Whereas it is represented to this General Assembly, that the Recorder of deeds in and for the county of Sussex in this State hath granted and issued, and was accustomed to grant and issue in most cases, general warrants for surveying and locating vacant land within the said county, without setting forth in such warrants a specification of the land thereby intended to be surveyed and located, as is required by the first section of the Act, to which this is a supplement, passed at Dover, the nineteenth day of June, in the year of our Lord, one thousand seven hundred and ninety-three; by reason whereof doubts have arisen concerning the validity of said warrants; therefore, to prevent the hardship and injustice that might result to the grantees of such warrants, and their assigns:—

40 General warrants valid

Section 1. All general warrants issued by the Recorders of the several counties in this State after the said nineteenth day of June in the year of our Lord one thousand seven hundred and ninety-three, and before the eleventh day of January in the year of our Lord, one thousand seven hundred and ninety-eight be, and the same are hereby declared to be good and available in law and equity, and shall have the same force and effect, as if they had issued in the special manner directed by the first section of the before recited Act, any thing in the said Act to the contrary notwithstanding.

41 Preference to special warrants

Sect. 2. All surveys made and patents granted under or by virtue of said warrants shall have the same effect, as if said warrants had issued in the special manner directed by the before recited section: *Provided nevertheless*, That in all cases where any special warrant may have issued, then in such case the special warrant shall have the preference, notwithstanding it may be of a younger date.

*Passed at Dover, February 2, 1807.*

### III.

1796

**AN ACT** to repeal part of an Act entitled *An Act to extend the time of payment of the purchase money of certain lands granted to the citizens of this State, and for other purposes.*

42 Expenses of trial—how borne

Section 2. All expenses arising and accruing on the hearing and trial since the first day of November last and hereafter of

any caveats heretofore or hereafter to be made or entered before the said commissioners by any person or persons under the laws of this State, including the daily allowance to the said commissioners already established (†) by law, shall be paid and discharged by the party or parties failing in his claim; and in case there be more than one decision or determination upon the same day, the said daily allowance shall be equally divided among the several parties failing in their claims as aforesaid; and for every determination each of the said commissioners shall receive the additional sum of two dollars to be paid by the party failing as aforesaid; any law of this State to the contrary in any wise notwithstanding. <sup>43 additional fee</sup> † (33)

Sect. 3. *And whereas*, there are many warrants, surveys, certificates of surveys, resurveys and locations, which have been executed altogether or in part on lands within the respective counties of this State and which have never been returned to the proper office and now remain in the possession of the former deputy surveyors or their representatives; whereby parties interested may be injuriously deprived of the use and benefit to be derived from such papers;—all warrants, surveys, certificates of surveys, and resurveys and locations heretofore made or executed partially or completely on any lands within this State, and which have not been returned to the proper office, shall be returned within six months from the passing of this Act to the Recorder of deeds of the county, in which such lands lie, to be preserved by him among the records of the Land Office, and to be consulted and used by, and for the use of, all persons interested; and upon application made by the owner or claimant of such land to any former deputy surveyor or person, who acted by appointment under such deputy surveyor, or the legal representative of him in case he be dead; in such case if the said deputy surveyor or his agent or the representative of him or them shall refuse or neglect to make or cause to be made returns as aforesaid of their papers and proceedings in his or their possession, he shall forfeit and pay the sum of one hundred dollars, the one half to the informer and the other half to the use of the State, to be recovered in any court of record in this State, by action of debt, bill, plaint or information. <sup>44 Return of surveys</sup>

Sect. 6. The Board of commissioners shall hold four terms each and every year in the counties of this State respectively, until the business before them pending shall be finished and concluded; which terms shall continue two weeks, unless the business and trials set down for the particular terms should be sooner completed. <sup>45 Four terms annually</sup>

Sect. 7. The commissioners in each of the counties of this State respectively shall meet on or before the first Tuesday in April next, and when met shall determine and appoint the time for the commencement of each of the terms in the several counties aforesaid, and as soon after as may be, advertise the same in all the hundreds of the counties of this State. <sup>appointed</sup>

*Passed February 9, 1796.*



## IV.

1797 *AN ACT to revive the proceedings of the commissioners of the Land Office in Kent county, and for other purposes.*

46 Power of two commrs Section 2. From and after the passing of this Act, any two of the said commissioners shall have full power and authority to hear, try and determine all and every caveat, cause, proceeding and other matter whatsoever, depending before the said commissioners of the Land Office in the respective counties of this State as fully and amply to all intents and purposes, as three of the said Commissioners might or could do before the making of this Act. (c)

*Passed January 24, 1797.*

## V.

1798 *AN ACT to prevent the issuing of warrants for the location of land.*

47 Issuing of Warrants, &c. prohibited From and after the passing of this Act, it shall not be lawful for the Recorder of deeds, in any county in this State to issue any warrant, directed to the surveyor of the county, authorizing him to survey and locate any land or lands whatever; and no surveyor of any county shall survey, locate, or make any plot of any lands upon any warrant of any Recorder, which may be hereafter issued; and all and every such warrant, survey, location, and plot shall be utterly null and void; any law to the contrary thereof in any wise notwithstanding.

*Passed January 11, 1798.*

—o—

## WEARS IN CREEKS AND RIVERS.

## I.

Between  
1726 & 1786

*AN ACT against wears across creeks and rivers.*

To the end that all persons inhabiting in or near any creek or river in this government may enjoy all privileges and advantages, that from them are to be reaped;—

1 Wears and nets across channel of creek—prohibited penalty

Whosoever shall make any wear or wears, or set any nets from one side to the other of the channel of any creek or river within this government, being thereof convicted by the view of one Justice of the Peace or by the testimony of one credible witness, shall for every such offence pay ten shillings; and the wear or wears shall be destroyed by order of the Justice, before whom the complaint shall be heard.

[Fisheries II]

*Provided,* That nothing in this Act extend to restrain the making of wears over mill-dams or races, nor to such as make wears on their own lands, so as that they in either of these cases shall not be injurious to others.

(c) Power is given to one commissioner to adjourn, and like power is given by Act of Jan 25, 1799, to the Recorder of deeds in case of non-attendance of any commissioner.

No wear or wears shall be made on the south side of Lewes creek in Sussex county, under the penalty of ten shillings, and the wear to be destroyed by order of any Justice of the said county.

2 South side  
Lewes creek

## II.

A SUPPLEMENT to *An Act entitled "An Act against wears across creeks and rivers."* 1803

Whereas it hath been represented to this General Assembly, that divers persons when fishing in St. Jones's creek or Dover river, to the disturbance of other persons, who fish in the said creek, use improper means therefor, by threshing and beating the waters of said creek, thereby preventing the fish from passing up and down the said creek, as they otherwise would do; And whereas the said Act, to which this is a supplement, doth not answer and provide in those cases;—

If any person or persons after the passing of this Act shall be discovered whipping, threshing, beating or otherwise disturbing the waters of St. Jones's creek or Dover river with a view to divert or drive the fish into his, her or their nets, seins or wears, he, she or they for every such offence, being thereof convicted by the view of any one Justice of the Peace or by the testimony of one credible witness, shall forfeit and pay to any person or persons, who may sue for the same, the sum of ten dollars with costs of suit to be recovered by complaint made to any one Justice of the Peace for the county of Kent, as other debts under twelve pounds are recoverable by the laws of this State.

3 St. Jones  
creek—beat-  
ing waters of,  
&c.

penalty

Mode of reco-  
very

*Passed at Dover, January 17, 1803.*

AN ACT prohibiting the use of wears, hedges and gill nets in St. Jones's creek. 1817

Section 1. No person shall keep or continue, make, construct or erect, place or use any wear, wears, hedges or gill seins in any part of St. Jones's creek in Kent county.

4 Wears, &c.  
in St Jones  
creek—  
prohibited  
5 Penalty

Sect. 3. If any person or persons shall, after the passing of this Act, put, place, erect, make or construct any wear, wears or hedge or any gill sein in any part of St. Jones's creek, every such person so offending shall for every such offence forfeit and pay the sum of twenty dollars to be recovered with costs of suit before any Justice of the Peace for Kent county, and applied the one half thereof to the use of the person or persons suing for the same, and the other half to the use of the poor of Kent county: and it shall be a part of every such judgment, that the wear, wears, hedge or gill sein complained of shall be removed and destroyed; and a separate warrant shall issue to be directed to any constable of the county, to cause the said wear, wears, hedge or gill sein to be removed and destroyed, and such warrant shall be a sufficient authority for so doing.

6 and wears,  
&c. destroyed  
(8)

Sect. 4. No person or persons shall obstruct any constable in the performance of any duty, which may be enjoined upon him

7 Obstructing  
constable

## WEARS IN CREEKS AND RIVERS.

penalty under the provisions of this Act, under penalty of being fined at the discretion of the Court of General Quarter Sessions of the Peace and Gaol Delivery of this State any sum not exceeding one hundred dollars, upon conviction upon indictment before such court, to be applied to the use of the poor by the Trustees of the county where the offence shall be committed.

8 Any person may destroy, &c Sect. 5. It shall be lawful for any person or persons to destroy any wear, wears, hedge or gill sein found in any part of St. Jones's creek.

9 Gen'l issue Sect. 6. If any person or persons be sued for any thing done under this Act, such person or persons may on plea of the general issue give this Act and the special matters of justification under it in evidence.

*Passed at Dover, Feb. 6, 1817.*

1824 AN ACT to revive and continue in force "An Act prohibiting the use of wears, hedges and gill nets in St. Jones's Creek."

10 Revived (4-9) Section 1. The Act of the General Assembly of this State passed at Dover the sixth of February eighteen hundred and seventeen entitled An Act prohibiting the use of wears, hedges and gill nets in St. Jones's creek be and the same is hereby revived and declared to be in full force, except the second section thereof.

11 Proceedings before Justice to remove wears Sect. 2. Upon any complaint made to any Justice of the Peace in and for Kent county, that any wear or wears, hedge or hedges or gill sein is kept, continued, made, constructed, erected, placed or used in any part of Jones's creek in Kent county contrary to the provisions of the Act hereby revived, and such complaint being verified by the oath or affirmation of the person making the same, it shall be the duty of the Justice of the Peace and he is hereby authorized and required to issue a warrant directed to any constable of Kent county ordering such constable to remove and destroy such wear or wears, hedge or hedges, or gill sein: which warrant shall be sufficient authority for removing any such wear, or wears, hedge or hedges, or gill sein; and if any action shall be brought against any constable acting under such warrant or against any person or persons aiding such constable or any other person for any proceedings under this Act or the Act hereby revived, this Act and the Act hereby revived or any complaint and warrant may be given in evidence under the general issue.

*Passed at Dover, January 28, 1824.*

## III.

1813 AN ACT for regulating the construction and use of wears, nets and gill seines in the waters of Indian River in Sussex county.

12 Wears in Indian River Section 1. It shall and may be lawful for any person or persons, inhabitants of Sussex county, to make, construct, erect, place and use any wear, wears, hedge or gill seines in any of the waters of Indian river above the intersection of Pepper's creek with said river, in the county of Sussex, under the following restrictions

and limitations, that is to say; No gill sein or net shall be placed, used or kept for the purpose of taking fish, so as not to leave a clear passage or space of the deepest waters of said river directly across said channel of twenty rods.

Sect. 2. No wear or wears shall be put, placed or erected in any of the waters of Indian river above or higher up said river than the place known by the name of the Ferry in any manner, so as to injure the free navigation for vessels, flats or other water crafts, to pass and repass at their will or pleasure; nor shall any two wears be set, placed or put nearer each other than twenty rods, and at all times shall leave a clear space directly across said channel or deepest water of the distance of forty feet of the said river; and the owner or owners of every such wear shall take up the same and every part thereof once during the month of April in each and every year.

Sect. 3. If any person or persons shall place, put, keep or use any gill net, wear, hedge or sein in or across any of the waters of Indian river contrary to the provisions of this Act, it shall be the duty of any Justice of the Peace for Sussex county on complaint to him made by any freeholder of said county to issue his warrant directed to any constable of said county, requiring such constable to remove and destroy any such wear, hedge or gill sein, and the owner or owners shall be liable for all charges attending the same to be adjudged by some Justice of the Peace for said county.

Sect. 4. It shall be lawful for any person or persons to destroy any wear, hedge or gill sein found in any of the waters of Indian river, contrary to the provisions of this Act.

*Passed at Dover, January 31, 1823.*

#### IV.

#### AN ACT for regulating the construction and use of wears in Spring creek.

1821

Section 1. It shall and may be lawful for any person or persons residing in Kent county to make, construct and place in any part of Spring creek above the bridge across the said creek near Frederica, being the north-west prong of Murderkill creek, any wear or wears or fikes for the purpose of taking fish in the said creek, and to have, hold, use and enjoy the said wear or wears or fikes for his, her or their own use and benefit: *provided*, that nothing in this section contained shall authorize any person or persons to erect or construct any wear or fikes upon or contiguous to lands of any other person or persons without first obtaining his, her or their permission to erect and construct the same.

Sect. 2. *Provided nevertheless*, That no wear or fikes shall extend in the said creek further than half across the channel or deepest part of the said creek, and that no two wears or fikes shall be put or placed nearer each other than at the distance of twenty rods; and no wear shall be suffered by the owner thereof to remain longer in the said creek than four months in one year; the owner thereof upon taking up the same shall clean the bottom of said creek where the said wear stood.

13 Above Ferry—  
not to injure navigation

14 distance apart

15 duty of owner

15 Power and duty of Just. Peace

16 Powers of individuals

17 Wears in Spring creek above bridge (21)

18 Extent of the wears

19 distance apart

20 owner to clear bottom

21 Direction  
for placing

Sect. 3. *And provided also,* [That every wear or sike so to be placed as aforesaid in the said creek shall be set and placed in the said creek under the directions of three disinterested freeholders to be appointed for that purpose by a Justice of the Peace residing in the village of Frederica or the nearest Justice of the Peace to said village, in case no Justice of the Peace should reside therein.

22 Concealed  
hedging pro-  
hibited

penalty

Sect. 4. No invisible, concealed or blind hedging shall be put or placed in said creek; and if any person or persons shall put or place or cause to be put or placed in the said creek any such invisible, concealed or blind hedging or any other obstruction or contrivance not expressly authorized by this Act, every such person so offending shall for every such offence forfeit and pay the sum of thirty dollars to be recovered with cost, before any Justice of the Peace for Kent county aforesaid and to be applied the one half thereof to the use of the person or persons suing for the same, and the other half to the use of the poor of Kent county aforesaid.

*Passed at Dover, January 31, 1821.*

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## WILLS.

1829

### AN ACT concerning wills.

1 Lands, &c.  
devisable  
2 Blaw. Com.  
375

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.

2 Who can  
make a Will

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.

3 Who cannot

Sect. 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.

4 Requisites  
to a Will  
(13-14)

Sect. 3. 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.

5 Witness  
3 Blaw. Com.  
377

A creditor of a testator may be a witness to his will and testament, although 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, although 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.

6 Revocation

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 subscri-

bing 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 Woodd, lec. 370  
Wms. 304 n

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 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.

7 Nuncupative Wills

8 when reduced to writing

9 and proved

Sect. 4. 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 subscribing 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.

10 Will, proved out of this State

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.

11 Copy recorded

In every case of 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.

12 Copy now recorded. evidence

13 Will (not agreeable to this Act) of non-resident not invalidated as to personal property 14 but not admitted to probate in this State

Sect. 5. The 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, although 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.

*Passed at Dover, January 23, 1829.*

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## WITNESSES.

Between 1726 & 1736

AN ACT to oblige witnesses, being legally summoned, to give evidence.

Liability for non-attendance

If any person or persons summoned or required by any process whatsoever or order of any court or magistrate or other officer whatsoever within this government lawfully authorized to issue forth the same, to give his, her or their evidence upon any matter or difference whatsoever, shall refuse or neglect to give attendance according to the directions of the said order, summons or command; such person or persons so refusing (not being prevented by sickness or some unavoidable accident) shall pay to the party or parties wronged or injured thereby all such damages, as he or they shall sustain by reason thereof.

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## WOOD-CORDERS.

1829

AN ACT concerning wood-corders.

1 Appointed by Quarter Sessions

2 vacancies

3 Deputies 1 oath

Section 1. 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 shown 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.

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.

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. 5 Fees

Sect. 2. 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." 6 Buying or selling without measure, where wood-corder penalty

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. 7 Penalty on wood corder for not measuring

Sect. 3. 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. 8 Length of wood

Sect. 4. This Act shall not extend to any incorporated town having regulation by its charter, by-laws or ordinances for the measurement of fire-wood and the appointment of a wood-corder. 9 Places not within Act

*Passed at Dover, January 26, 1829.*

## WRECKS.

AN ACT for the more effectual preservation of all such ships or other vessels and the goods thereof, as shall be forced on shore or stranded upon the coasts of this State, and for other purposes therein mentioned. 1786

Whereas from the many unavoidable dangers to which vessels are exposed upon the coasts of this State, the said vessels with their cargoes, mariners and passengers are often liable to be lost, cast away or stranded: for the prevention of such accidents and for other relief in the premises:—

Section 2. The sheriffs, Justices of the Peace and officers of the customs near adjoining to the coasts of this State, upon application made to them or any of them by or on behalf of any commander, officer or owner of any ship or vessel belonging to this State, the subjects thereof or others, in danger of being stranded or run on shore, or being actually stranded or run on shore, are hereby empowered and required to summon so many men of the county, as shall be thought necessary to the assistance and for the preservation of such ship or vessel so in distress as aforesaid and their cargoes; and if any person shall refuse or neglect to attend on such summons, he shall forfeit and pay, for such neglect or refusal, the sum of five pounds, for the use of the State to be recovered by such sheriff, Justice of the Peace or officer of the customs in the manner, that other debts of the same dignity are by the laws 1 Authority to summon men to aid vessel in distress 2 penalty for neglect



of this State; and if there shall be any ship or vessel belonging to this State, or to the citizens thereof, riding at anchor near the place where such ship or vessel is in distress or danger as aforesaid, the sheriffs, Justices of the Peace, officers of the customs above mentioned or any of them are hereby empowered and required to demand of the master or superior officer of such ship or vessel so riding at anchor as aforesaid, assistance by their boats and such hands, as they can conveniently spare for the said service and preservation of such ship or other vessel so in distress as aforesaid; and in case the master or superior officer of such ship or vessel riding at anchor as aforesaid shall refuse or neglect to give such assistance, he shall forfeit for the same the sum of one hundred pounds, to be recovered by the master, superior officer or owner of the said ship or vessel so in distress, together with costs of suit, in any court of record within this State, by action of debt, bill, plaint or information.

3 ships shall assist

4 penalty for neglect

5 Right to give orders

6 going on board without leave or orders

or molesting

penalty

7 Pressers on board repelled by force

Sect. 3. And to prevent confusion and contradictory orders among those persons that are hereby directed to carry this Act into execution; the persons so assembled to save any ship, vessel, or their goods as aforesaid shall conform in the first place to the orders of the master or other officer or owner of such ship or vessel, or such person or persons as shall be employed by them, and for want of their presence or direction, to the orders of the high sheriff of the county, and in his absence, to the orders of the Justices of the Peace, and in their absence, to the orders of the officers of the customs; and if any person or persons whatsoever, besides those empowered by the said sheriffs, Justices, or officers of the customs as aforesaid or some one of them shall enter or endeavor to enter on board any ship or vessel so in distress, without leave or consent of the commander or other superior officer or owner of the said ship or vessel, or of the sheriffs, Justices of the Peace or officers of the customs, or some one of them, employed for the service and preservation of the said ship or vessel as aforesaid, or in case any person shall molest him, them or any of them in the saving of the said ship, vessel or goods, or shall endeavor to impede or hinder the saving any such ship, vessel or goods as aforesaid, or when any such goods are saved, shall take out or deface the marks of any such goods, before the same shall be taken down in a book or books for that purpose to be provided by the master, superior officer, owner, sheriffs, Justices of the Peace, or officers of the customs as aforesaid, or some one of them, such person or persons shall within the space of thirty days make double satisfaction to the party grieved, or in default thereof shall be committed to the county gaol, where he shall continue and be employed in hard labor for the space of twelve months: And it shall be lawful for any master, superior officer or owner of the said ship or vessel so in distress as aforesaid, or for the said sheriffs, Justices of the Peace or officers of the customs or any of them to repel by force any such person or persons, as shall without such leave or consent from the said master, superior officer or owner or the said sheriffs, Justices of the Peace or officers of the customs as aforesaid, or some one of them, press on board the said ship or vessel, and thereby molest them or any of them, in the preservation of such ship or vessel so in distress as aforesaid or the goods thereof.

Sect. 4. In case any ship or vessel shall be wrecked or stranded upon the costs aforesaid, and the cargo or some part thereof shall be found on the shores of this State, and no person shall appear to claim the same or any part thereof, the person or persons so finding the said goods and saving the same shall make a true inventory thereof, and shall apply to two Justices of the Peace, who shall cause the said goods together with the said inventory taken as aforesaid after being signed by them to be put into the hands and possession of some good substantial and responsible person, who shall be accountable for the same; and if the said goods shall not be legally claimed by the rightful owner or owners or some person on his or their behalf, within the space of one year next ensuing, then public sale shall be made thereof; and if the goods are of a perishable nature, they shall be sold forthwith after giving due notice by advertisement or otherwise; and after all charges deducted, the residue of the monies arising by such sale with a fair and just account of the whole shall be transmitted to the Treasurer of the State, to be disposed of as other public monies in his hands, subject nevertheless to be refunded to the rightful owner or owners when appearing, who, upon affidavit or other proof made of his or their right or property thereto to the satisfaction of one of the Judges of the Supreme Court, shall upon his order receive the same out of the treasury.

Sect. 5. If any person or persons shall plunder, steal, take away or destroy any goods, merchandise or other effects from or belonging to any ship or vessel whatsoever which shall be in distress as aforesaid, or which shall be wrecked, lost, stranded or cast on shore on any part of the coast of this State, or any of the furniture, tackle, apparel, provision or any other part of such ship or vessel whatsoever, or shall beat, wound or otherwise maltreat, with intent to kill or destroy, or shall wilfully prevent or obstruct the escape of any person or persons endeavoring to save his or their life or lives from such ship or vessel or the wreck thereof, or if any person or persons shall show any false light or lights, or otherwise contrive to bring such vessel into danger, then such person or persons so offending shall be deemed guilty of felony, and shall be punished as persons convicted of grand larceny by the laws of this State.

Sect. 6. It shall and may be lawful for any one or more of the Justices of the Peace of this State, upon information made before him or them upon oath or affirmation of any part of the cargo or effects whatsoever belonging to any ship or vessel lost or stranded upon or near the coast aforesaid or the goods and effects of a ship or vessel stranded or cast away on the shores opposite to this State or elsewhere and brought into the same being unlawfully carried or conveyed away or concealed in any house, out-house, barn or other place or of some reasonable cause of suspicion thereof, to issue his or their warrant or warrants for searching of such house, out-house, barn or other place, as in other cases of stolen goods; and if the same shall be found in any such house, out-house, barn or other place or places whatsoever or upon or in custody or possession of any person or persons not legally authorized and entitled to keep and withhold the same, and the owner or occupier of such house out-

8 Goods saved not claimed within a year

inventoried

sold  
9 perishable

10 money p'd into St. Treasury

11 subject to be refunded

12 Showing false lights, plundering, &c. how punished.

13 Goods concealed, &c.

14 search warrant

15 if found &  
not immedi-  
ately deliver-  
ed

house, barn or other place, the person or persons, upon whom or in whose custody or possession the same shall be found, shall not immediately upon demand deliver the same to the owner or owners thereof or to such other person or persons as shall be lawfully authorized to demand the same, or shall not give a good account to the satisfaction of the said Justice or Justices, how he, she or they came by or were possessed thereof, it shall and may be lawful for such Justice or Justices upon proof of such refusal to commit such person or persons so offending to the common gaol of the county, until he, she or they shall have paid to such lawful owner or owners or to the person or persons lawfully authorized to receive the same double the value of the goods or things so by him, her or them unlawfully detained.

penalty

16 Salvage

Sect. 7. And for the encouragement of such persons, as shall give their assistance to such ships or vessels so in distress as aforesaid or shall take up and secure any goods, that shall be lost and cast on shore within this State, the said sheriffs, Justices of the Peace, officers of the customs and the master or other superior officer of any ship or vessel and all others, who shall act or be employed in the saving and preserving of any such ship or vessel in distress or their cargoes or in finding and saving any goods that shall be lost and cast on shore, shall within thirty days after the service performed be paid a reasonable reward or salvage for the same by the commander, master or other superior officer, owners or mariners of the ship or vessel so in distress or by the merchant, whose ship, vessel or goods shall be saved as aforesaid; and in default thereof, the said ship or vessel, the goods so saved, or so much thereof as may be thought sufficient, shall remain in the custody of such sheriff, Justice of the Peace or officer of the customs, until all charges shall be paid and until the said sheriff, Justice of the Peace, officer of the customs and the said master or other officer of the said ships or vessels and all others so employed as aforesaid shall be reasonably gratified for their assistance and trouble, or good security given to the satisfaction of the several parties who are to receive the same: And in case, after such salvage, the commander or other superior officer, owners or mariners of such ship or vessel so saved or merchant, whose goods shall be saved as aforesaid, shall disagree with the said sheriff, Justice of the Peace or officers of the customs touching the monies deserved by any of the persons so employed as aforesaid, it shall be lawful for the commander of such ship or vessel so saved or the owner of the goods or the merchant interested therein, and also for the said sheriff, Justice of the Peace, or officer of the customs or other person concerned therein, to nominate three good and reputable freeholders of the county who shall thereupon adjust the quantum of the monies or salvage to be paid to the several persons acting or being employed in the saving of such ship, vessel or goods; and such adjustments shall be binding on all parties and shall be recoverable if under twelve pounds, before any Justice of the Peace, and if above twelve pounds, in any court of record within this State, by the respective persons, to whom the same shall be allotted by the said freeholders as aforesaid.

17 vessel, &c.  
to remain in  
custody till  
paid

18 adjustm't  
in case of dis-  
pute, by free-  
holders

19 award

20 Abuse of

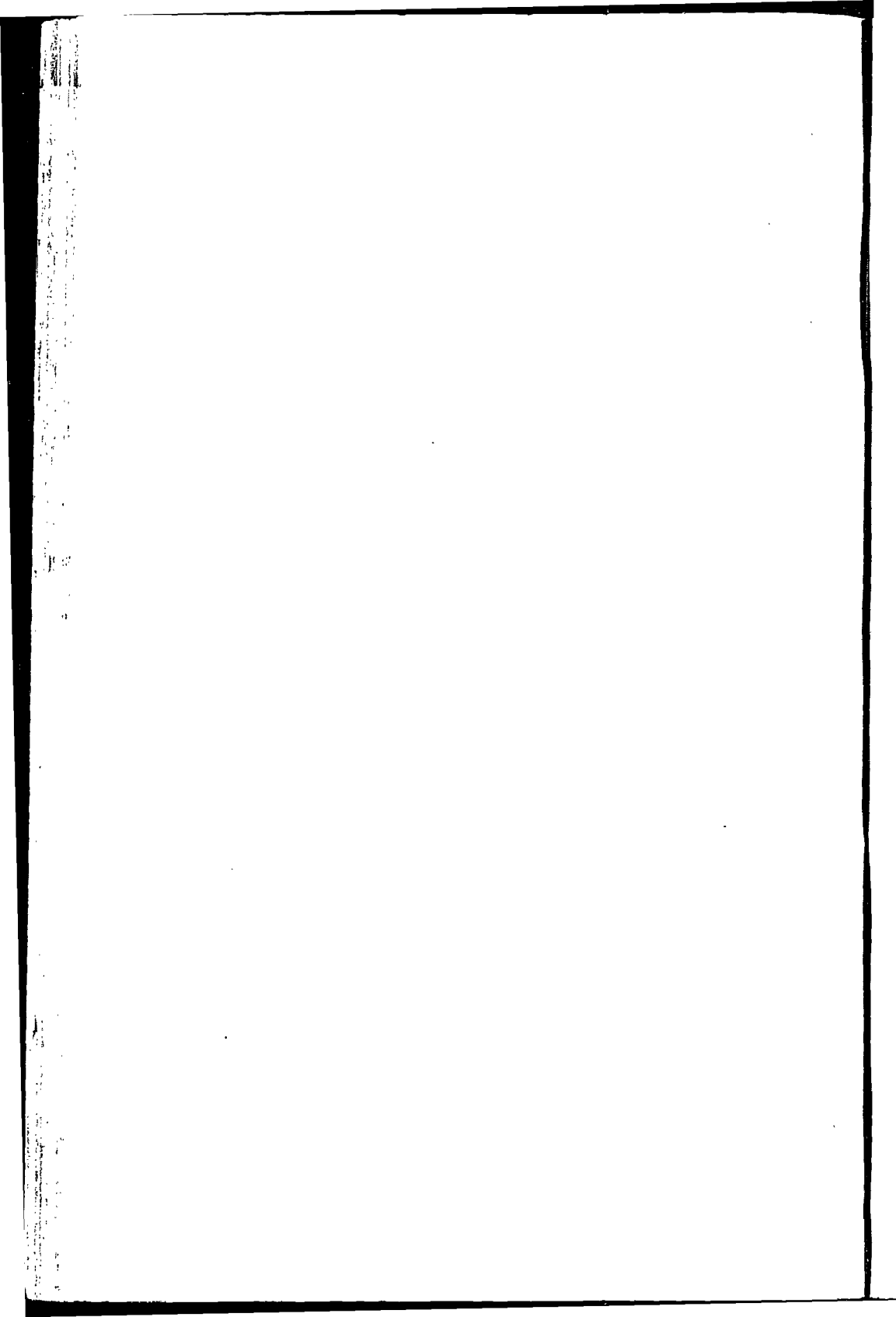
Sect. 8. If any sheriff, Justice of the Peace, officers of the

customs or others so employed as aforesaid shall by fraud or wilful neglect abuse the trust so hereby reposed in him or them as aforesaid, and shall be convicted thereof in due form of law in any Court of Quarter Sessions in this State, such sheriff, Justice of the Peace, officer of the customs or others shall respectively forfeit treble damages to the party grieved, to be recovered by action, bill, plaint or information in any court of record within this State. this Act, treble damages

Sect. 9. If any action, suit or information shall be commenced or prosecuted against any person or persons for any thing, that he or they shall do or cause to be done in pursuance and execution of this Act, all and every person and persons so sued in any court whatsoever shall and may plead the general issue, and give this Act and the special matter in evidence; and if in any such suit the plaintiff or prosecutor shall become nonsuit or forbear prosecution or discontinue his suit or if a verdict shall pass against him, or judgment be given on demurrer, then and in any of the said cases the defendant or defendants shall recover full costs, for which he and they shall have the like remedy as where costs by law are awarded; and this Act shall be taken and allowed in all courts within this State as a public Act, and all Judges and Justices are hereby required to take notice thereof; and the sheriff of each county shall read or cause this Act to be publicly read at the next Court of Quarter Sessions of his county after the passing hereof, and at the said court to be held in the month of November in every year, under the penalty of fifty pounds for each neglect, and during the reading thereof all other business shall cease in the said courts. 21 Gen'l issue

22 duty of sheriff to read this Act at Quarter Sess. in Nov. every year, on penalty of £50

*Passed February 2, 1786.*



## PART II.

### ARMORY.

AN ACT *providing for the preservation of the public arms and accoutrements in Kent and Sussex counties.*

1829

Section 1.—[By this section the sheriff of each of the aforesaid counties is required to cause an armory to be built on the public ground on the south or south-east side and within sixty feet of the gaol in his county.]

1 Armory in Kent & Sussex

Sect. 2.—[By this section the sheriff is required to deposit in the armory the public arms and accoutrements in the Court House in his county.]

And it shall be the duty of the sheriffs, 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.

2 Duty to seize public arms

Sect. 3. 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 all other allowances.

3 Suits for such seizure

4 costs

Sect. 4. 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 thereof 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.

5 Penalty for buying, having, &c. public arms

*Passed at Dover, February 13, 1829*

—o—

### AUDITOR'S OFFICE.

AN ACT *to appropriate the sum of ten hundred and sixty-six dollars and sixty-seven cents, for covering the flat part of the roof of the State House, in the town of Dover, with copper, and for other purposes.*

1795

Section 3. The two rooms on the west side of the said State House and the room on the south-east corner of the same on the second story thereof be and are hereby appropriated to and for the use and accommodation of the General Assembly and the Auditor of Accounts, whenever they or either of them shall require the use or occupation of the same.

*Passed February 7, 1795.*

## I.

1798 **AN ACT** to provide for the erection of a public bridge across Broad Creek in the county of Sussex.

[Roads and Bridges, 8] Section 1 provides for a bridge over said creek between the saw mill of George Mitchell and the landing of Isaac Cooper.]

[Sect. 3. The said bridge shall be so constructed as to admit boats without masts, scows, and stocks, to pass under it with ease and convenience; that the abutments and causeway shall be at least twenty feet wide, and the bridge at least sixteen feet wide.]

*Passed January 16, 1798.*

## II.

1802 **AN ACT** for erecting a bridge and causeway over Cedar creek, in Sussex county.

CEDAR CREEK

Whereas it has been represented to the General Assembly of this State, that considerable convenience and utility would result to the inhabitants of Cedar creek and Slaughter Necks, from the erection of a bridge, by subscription, over the waters of Cedar creek.

Section 1. [By this section, Daniel Rogers, Robert Hill and Edward Stapleford, the survivors or survivor of them, are appointed commissioners to build a bridge and causeway across Cedar creek to begin at or near a cedar tree the north boundary of Daniel Roger's land.]

1 Space clear over the channel

Sect. 2. In the deepest part of the channel of said creek, there shall be left the clear space of sixteen feet at least, and shall be constructed so as to admit boats without masts to pass and repass under it with convenience; and such person or persons, as shall have occasion to pass or repass with any boat or otherwise, are hereby obliged carefully to pass so as the same receive no damage thereby, under the penalty of two dollars for every offence therein, together with the expense of repairing and amending the said bridge, to be recovered with costs in the name of any one of the commissioners aforesaid before any Justice of the Peace of said county and applied to the use of the said bridge.

2 penalty for damaging it

3 Draw, in certain cases

Sect. 3. And whereas it has been stated, that it may happen, that Joseph Haslet or his representatives may in process of time erect and establish a place of traffick or intercourse with said waters of Cedar creek aforesaid above said bridge thus to be erected and built as aforesaid;

If the aforesaid Joseph Haslet or his representatives do and shall erect make or build, or cause to be erected, made or built, a wharf and granaries or granary at or upon any part of his the aforesaid Joseph Haslet's swamp, low grounds or cripple now lying and adjoining the head waters of Cedar creek aforesaid, then and in such case it shall be the duty of the aforesaid commissioners, and they are hereby directed and required, at the request of the said Joseph Haslet, or his representatives, within four months notice thereof,

to cause the said bridge to be changed in such manner and form, as may afford a sufficient draw or pass-way to any vessel or boat, which may eventually have occasion to pass or repass to or from such wharf, granaries or granary so erected, built and completed :

*Provided nevertheless,* That there shall be built and erected a wing to project from each side of the bridge on the south side of the creek, so as effectually to prevent the sand from washing down into the said creek. <sup>4 Precaution &c.</sup>

*Passed at Dover, February 2, 1802.*

### III.

AN ACT for erecting and keeping in good repair a draw-bridge over St. Jones Creek. 1813

Whereas, the erection of a draw-bridge over St. Jones' creek <sup>1 Site</sup> near the Forest Landing, will be of great public utility.

Section 1. [Henry Molleston, Philip Hardcastle, John Conwell, Thomas Knock and Thomas Candy or a majority of them are authorized to fix the site of the bridge; to make return to the Court of General Quarter Sessions of the Peace, Kent county.]

Sect. 2. [By this section managers are appointed to build a <sup>2 Width</sup> draw-bridge at least eighteen feet wide across said creek and to make a causeway through the cripple.]

Sect. 3. The said bridge shall be built of timber of the most durable kind that can be procured, with a draw of the length of at least twenty feet over the channel or deepest part of the said creek for the purpose of letting vessels pass and repass through the same; and the persons navigating the said vessels so passing and repassing are hereby directed to raise or remove the said draw in such manner, as that the same receive no damage thereby, under the penalty of ten dollars for every such neglect or offence herein, to be recovered with costs before any Justice of the Peace for Kent county, one half thereof to be applied to the use of the party suing for the same, and the other half thereof to the purpose of maintaining the said bridge in good order and repair. <sup>3 Draw—length</sup>  
<sup>raised by persons passing through—</sup>  
<sup>penalty for injuring it</sup>

Sect. 4. The said draw-bridge and causeway, after they shall have been so erected and made as aforesaid, shall be deemed and taken to be a public highway free for all persons to pass and repass over and across the same free from toll and pontage; and the said bridge and causeway are hereby directed to be kept in good order and repair in the same manner that other bridges are directed to be kept; and if any person shall wilfully injure or destroy the said bridge, such person so offending upon conviction in the Court of General Quarter Sessions of the Peace for the county aforesaid shall be fined by the court in such sum, as they in their discretion shall think proper. <sup>4 Public highway</sup>  
<sup>5 supported as other bridges</sup>  
<sup>6 penalty for injuring it</sup>

*Passed January 30, 1813.*



## IV.

1793  
[FREDERICA] *AN ACT for the erecting and keeping in good repair, a bridge over Murderkill creek, where the State road crosses the said creek, at a place called Zacchariah Goforth's Old Landing.*

- 1 Bridge [By section 1 commissioners are appointed for erecting a "drawbridge across Murderkill creek, where the State road crosses said creek, at a place called Zacchariah Goforth's old landing."]
- Space betw. the wings, &c. Sect. 2. There shall be left clear in the place between the abutments, wings and other works erected for the use, support and preservation of the said bridge, the space of twenty feet at all times for the waters of the said creek to pass through; and there shall be left between the said abutments and over the channel of the said creek the clear space of nineteen feet at least, over which shall be erected and placed a draw or platform of the breadth of eighteen feet with good and sufficient chains for raising up the same for the accommodation of all such persons as have occasion to pass with any vessel through the said bridge, who are hereby obliged to raise and lower the said draw or platform, so that the same receive no damage thereby, under penalty of four dollars for every neglect or offence therein to be recovered with costs in the name of the State before any Justice of the Peace of Kent county to and for the use of Kent county.
- breadth of the draw
- penalty for damaging it
- Supported by county Sect. 3. The Levy Court of Kent county shall after the said bridge shall be erected and built as aforesaid, cause the said bridge to be supported, maintained and repaired from time to time, always keeping up a draw or platform as aforesaid, in like manner as other bridges are supported, maintained and repaired in said county.
- A common highway Sect. 4. The said draw-bridge shall be deemed and taken to be a common highway. *Passed February 2, 1793.*

## V.

1793  
HEAD OF BROADKILN  
1 Site *AN ACT for erecting a causeway and bridge over the head of the Broadkilm creek in Sussex county.*

- Section 1.—[By this section commissioners are appointed to build a bridge and causeway over said creek to run from a white oak stump a boundary between lands of William Peery and Jacob Hazzard on north side of Broadkilm creek, to south side of said creek, land in possession of George Conwell.]
- 2 Space left over channel Sect. 2. In the deepest part of the channel of said creek there shall be left the clear space of sixteen and a half feet at least, over which shall be erected and placed a draw or platform of the breadth of sixteen and a half feet, with good and sufficient chains and other things necessary for raising up the same, for the use of all and every such person or persons as shall have occasion to pass or repass with any vessel through the said bridge, who are hereby obliged carefully to raise and lower the said draw-bridge, so as the same receive no damage thereby, under the penalty of ten shillings for every neglect or offence therein, together with the expense of repairing and amending the said bridge to be recovered,
- 3 breadth of draw
- 4 penalty for damaging it

with costs, in the name of any one of the commissioners aforesaid, before any Justice of the Peace of said county, and applied to the use of the said bridge.

*Passed February 2, 1793.*

# VI.

AN ACT for erecting a bridge and causeway over Lewes creek, 1793  
from the town of Lewes to the cape-side of the said creek, in the LEWES CREEK  
county of Sussex.

Section 1.—[By this section John Rodney, (a) Henry Fisher 1 Commiss'rs  
and Henry Neil, are authorized to build a bridge and causeway  
over the creek at Lewes-town, formerly called the Whore-kill, to  
begin at or near the place where the fort in the said town stood,  
and thence extending in a straight direction to the point of fast  
land on the cape side of the said creek nearly opposite to the house  
in the occupation of William Arnald.]

Sect. 2.—[This section authorizes subscriptions for raising 2 Subscrip-  
money to accomplish the work.] tions (19)

Sect. 3. In the deepest part of the channel of the said creek 3 Passage for  
there shall be left clear the space of sixteen feet at least, over vessels with a  
which shall be erected and placed a draw or platform of the draw (15-16)  
breadth of eight feet or more, with good and sufficient chains for  
raising up the same for the accommodation of all such persons as  
have occasion to pass and repass with any vessel through the said  
bridge, who are hereby obliged carefully to raise and lower the  
said draw-bridge, so as the same receive no damage thereby. un-  
der the penalty of ten shillings for every neglect or offence therein,  
together with the expense of repairing and amending the said  
bridge, to be recovered with costs in the name of the Treasurer of  
the county for the time being, before any two Justices of the Peace  
of the said county, and applied to the use of the said bridge.

Sect. 4. And for providing a fund to maintain and support 4 Collector  
the said bridge and causeway when erected, and for defraying any  
arrears that may be due for building the same; [the Justices of the  
Court of Quarter Sessions of the said county of Sussex shall and are  
hereby empowered and required] to appoint from time to time, so of-  
ten as there shall be occasion, some fit and proper person collector  
to demand, take and receive pontage or toll according to the rates  
following; That is to say, For every single horse and rider, three 5 Tolls  
pence; for every led horse, ox, cow or heifer, one penny; for every [6, 17, 20, 22]  
foot-passenger, one penny; for every sheep and hog, one penny; [23]  
for a coach or other four wheeled carriage with a pair of horses  
and riders, nine-pence; for a chaise or chair with one horse and  
the riders, four-pence, with two horses and riders, six-pence; for

(a) By an additional Supplement passed January 28, 1794, David Hall and Caloh  
Rodney are appointed commissioners in place of John Rodney and Henry Fisher, de-  
ceased; and the commissioners are authorized to appoint the collector of tolls; and  
power is given to the Judges of the Court of Quarter Sessions for Sussex county to sup-  
ply vacancies by the death, resignation, removal or inability to serve of any of said com-  
missioners; and by section 10 of the "Act to improve the navigation of Lewes creek,"  
See [See Lewes] provision is made for the transfer to the Trustees of the town of Lewes  
of the powers and privileges of the said commissioners.

(26)

a cart or wagon loaded, and horses and oxen, one shilling; empty cart or wagon and horses or oxen, four-pence.

6 Subscribers  
of £3 exempt  
from tolls  
[18—21]

Sect. 5. *Provided always*, That no pontage or toll shall be exacted or demanded of or from any person who shall subscribe and pay toward erecting and building the said bridge and causeway the sum of three pounds and upwards; and that all poor persons of the said county, exempted from the payment of public rates and levies, shall have liberty to pass and repass toll free.

7 List of sub-  
scribers return-  
ed

Sect. 6.—[By this section the commissioners are required to return into the Court of Quarter Sessions a list of the subscribers to be lodged with clerk of the peace, who is required to give certified copies thereof.]

8 Unlawful  
toll

Sect. 7. If the person to be appointed collector of the pontage or toll aforesaid shall exact or demand any greater or other rates or prices for passing over the said bridge than what are herein before prescribed and limited, he, she or they so offending shall forfeit and pay the sum of five pounds lawful money of this government, for every such offence, one moiety thereof to the Treasurer of the county for the time being for maintaining and supporting the said bridge and causeway and the other moiety thereof to the party grieved, to be recovered by action of debt, bill, plaint or indictment in any court of record in the said county of Sussex.

9 Collector's  
account

Sect. 8. The said collector shall once in twelve months at least pay unto the county Treasurer all such sums of money as he shall have then received by virtue of this Act, retaining thereout so much as shall be stipulated between him and [the Justices of the Quarter Sessions aforesaid] for his service in receiving the same; and the Treasurer shall give receipts to the collector for what he shall so bring in and pay from time to time; which receipts shall be the collector's discharge for so much: *And* the said Treasurer shall from time to time signify in writing to the Justices of the Court of Quarter Sessions of the said county, how much the collector brings in and pays as aforesaid; and when the said collector is negligent or refuses to do his duty in the premises, the Treasurer is hereby required to signify the same by way of complaint to the Justices aforesaid.

10 County  
Treasurer's  
account

Sect. 9. The Treasurer of the county for the time being shall keep a distinct book, containing a particular account of all the monies that shall come into his hands by virtue of this Act, as also of all disbursements and payments made by order of the Justices in their Court of Sessions, who are hereby authorized and required to direct the application of the said monies, as well for the maintenance and support of the said bridge and causeway from time to time, as for defraying any arrears that may be due for building the same. *And* the Treasurer shall be allowed for his trouble four pounds for every hundred pounds so by him received and paid, and so in proportion for any greater or less sum of money, to be allowed him at settling his accounts as is hereafter directed. *And* when the said County Treasurer shall be removed from his office or die, the said books and balance of monies then in his hands shall be delivered up and paid to the succeeding Treasurer.

11 his allow-  
ance

12 Commis-

Sect. 10. The commissioners aforesaid or the survivors or sur-

vivor of them, after the said bridge and causeway are finished and completed, and the Treasurer, for the time being, yearly and every year, after any monies have come into his hands by virtue of this Act, shall render and make report of their proceedings and transactions in the premises aforesaid to the Levy Court of the county of Sussex, who shall nominate and appoint, out of their own number, three fit persons to settle accounts with the said commissioners and Treasurer, who are hereby required to lay before them the true and just state of all the accounts relating to the said bridge and causeway in their hands; which three persons or two of them shall proceed to adjust and settle the said accounts, and make report to the next Court of Appeal after their appointment as aforesaid; which settlement when so made shall be signed or subscribed by the parties aforesaid, and then received and filed among the papers of the said court. And if after such settlement any balance of monies shall be in the hands of the said commissioners or any of them, the same shall be paid over to the Treasurer of the county, for the time being, to be applied and accounted for as other monies coming into his hands by virtue of this Act.

sioners and  
Treasurer to  
account with  
Levy Court  
[25]

Sect. 11. The collector of the toll or pontage shall, before he enters upon the execution of his office, give bond to the Justices of the Court of General Quarter Sessions, with security as shall be required, in the name of the Treasurer of the county, for the faithful performance of the trust reposed in him by this Act. And if the said collector shall at any time after refuse or neglect to do his duty, or shall happen to remove out of the said town of Lewes or die, the Justices of the Court aforesaid shall in every such case appoint another in his stead.

13 Collector's  
bond

[Note (a) 569  
page]

*Passed November 6, 1773.*

### A SUPPLEMENT to said Act.

1775

Whereas it is apprehended that turning the channel of Lewes creek in the county of Sussex, from the place where it now runs at and near the bridge in part erected over the said creek at Lewes-town, to the south-west side of the said creek near the fast land, would be a beneficial improvement; and that the pontage allowed to be paid by [the Act aforesaid] will not be sufficient for the maintaining and supporting the bridge and causeway now erecting by virtue of the said Act; and that subscribers for building said bridge are not sufficiently encouraged:—

Section 1.—[This section authorizes the commissioners] to cut a canal of the width of ten feet and the depth of two feet, from the south-west channel of Lewes creek aforesaid, adjoining a small island called Kollock's Island, as straight as conveniently may be near the south-west shore of said creek, until it passes through the place where a passage of ninety feet is left between two abutments of the bridge now erecting, and from thence in such direction into the present channel of the said creek below the aforesaid bridge, as they shall judge most proper and convenient for terminating the same; and when the said canal is so cut in manner aforesaid, they the said commissioners or any two of them are hereby authorized and empowered to stop and fill up the present

14 Canal

15 passage

channel of the said creek on the cape-side thereof, and to continue the causeway now erecting across the same, any thing in the said Act to the contrary notwithstanding: And also, if they shall find it necessary and convenient, they are hereby empowered and authorized to stop the said channel at the upper end of Shankland's Island to the cape, and that smaller channel situate between White's and Kollock's islands, for the purpose of more readily conveying the waters of the said creek into the canal to be cut in manner aforesaid.

16 draw

Sect. 2. *Provided always*, That there shall be left clear in the place, where the said canal is to pass, between the abutments of the said bridge the space of ninety feet at all times for the waters of the said creek to pass through, excepting the piles necessary for supporting the said bridge; and that there shall be left between the rows of said piles the clear space of sixteen feet at least; over which shall be erected and placed a draw or platform of the breadth of eight feet or more, with good and sufficient chains for raising up the same, for the accommodation of all such persons as have occasion to pass and repass with any vessel through the said bridge, who are hereby obliged carefully to raise and lower the said drawbridge, so as the same receive no damage thereby, under the penalty of ten shillings for every neglect or offence therein, together with the expense of repairing and amending the said bridge, to be recovered with costs in the name of the Treasurer of the county for the time being before any two Justices of the Peace of the said county, and applied to the use of the said bridge.

17 Additional  
toll [5—23]

Sect. 3. The person appointed to collect the pontage or toll, for passing the bridge aforesaid may and shall demand, take and receive the additional rates or toll following, more than what is already allowed by the said Act; *to wit*: for every single horse and rider, one penny; for every foot passenger, one penny; for every led horse, ox, cow or heifer, one penny; for a coach, or other four wheeled carriage, with a pair of horses and riders, nine-pence; for a cart or wagon loaded and horses or oxen, six-pence; for a chaise or chair with one horse and the riders, four-pence; with two horses and riders, six-pence; and for an empty cart or wagon and horses or oxen, two-pence.

18 Exempt  
from toll  
(6—21)

Sect. 4. No pontage or toll shall be demanded and knowingly taken of or from the wife or children or servants of any person, who hath subscribed and paid or shall hereafter subscribe and pay towards the erecting the aforesaid bridge and causeway the sum of three pounds or upwards; or of or from the servant or servants of any such wife or children, during the life of such subscriber or for twenty years from and after the passing of this Act, under the penalty of twenty shillings for every such offence to be recovered with costs and applied in manner, as by this Act is before directed with respect to persons doing damage to the draw of the aforesaid bridge.

*Passed March 29, 1775.*

Whereas the commissioners by an Act of General Assembly,

entitled, "An Act for erecting a bridge and causeway over Lewes creek, from the town of Lewes to the cape-side of said creek, in the county of Sussex," have been prevented from completing the same for want of a sufficient stock subscribed :—

Section 1. It shall and may be lawful for the said commissioners, or the survivors or survivor of them, to receive and take in subscriptions for erecting and completing the said causeway and bridge over Lewes creek from the town of Lewes to the cape-side in a direct line as near as may be, beginning at or near the place where the fort in the said town stood; and the toll arising from the said bridge and causeway, shall be applied to and for the sole use and benefit of the subscribers and commissioners, for paying off and discharging all arrears due and unpaid to workmen and others, on account of the causeway erected previous to the late war, and for reimbursing such persons as may advance money to the erecting and finishing the said bridge and causeway, on additional subscriptions : 19 Subscriptions

Sect. 2. *Provided*, That the said subscribers and commissioners do finish the said bridge and causeway, and keep the same in good repair until the said arrears and subscriptions are or shall be paid. 20 appropriation of the toll (22)

Sect. 3. All subscribers, who shall be reimbursed their subscription money, shall, after such reimbursement, pay such toll for crossing the said bridge, as is described by the Act, to which this is a supplement. 21 Subscribers reimbursed shall pay toll

*Passed January 29, 1791.*

#### ANOTHER SUPPLEMENT.

1796

Whereas the bridge and causeway lately erected on Lewes creek are likely to become useless by defect of provision for their support:—

Section 1. The pontage and toll arising from the said bridge and causeway shall be applied to keeping the said bridge and causeway in good repair; and all monies arising as aforesaid, more than shall be sufficient for such repairs and paying the collector thereof, shall be applied to and for the sole use and benefit of the subscribers and commissioners for paying off and discharging all arrears due and unpaid to workmen and others on account of the causeway erected previous to the late war, and for reimbursing such persons as may advance or have advanced money to the erecting, finishing or repairing the said bridge or causeway on additional subscriptions. 22 Toll applied [20]

Sect. 2. The person appointed or to be appointed to collect the pontage or toll for passing the said bridge and causeway may and shall take and receive the same rates of toll and pontage for every loaded or empty cart or wagon and horse or team, that shall go upon or pass over the draw or platform of said bridge, as ought to be received in case the said cart or wagon and team had passed over the bridge and causeway aforesaid. 23 Toll for passing platform

Sect. 3. The master or owner or owners of every vessel, which shall or may break or in any manner or by any means injure the said bridge or causeway or any part of them or either of them, and 24 Penalty for injuring bridge, &c.

the owner of any cart, wagon or carriage, which, otherwise than by passing in a direct manner over them, shall injure the said bridge or causeway or any of their appurtenances, shall forfeit and pay the sum of one dollar and fifty cents for such injury, together with the expense of repairing the said part to be recovered with costs, in the name of any one of the commissioners of the said bridge, before any Justice of the Peace of the said county, and applied to the use of the said bridge and causeway.

25 Accounts  
of commis-  
sioners to Le-  
vy Court

Sect. 4. The commissioners heretofore appointed to finish, complete and repair the said bridge and causeway, or a majority of them shall yearly and every year render and make report of their accounts, proceedings and transactions in the premises to the Levy Court of the county of Sussex, who shall nominate and appoint, from among the members of the said court, three suitable persons to settle the accounts of the said commissioners; which three persons so appointed as aforesaid or any two of them shall proceed to adjust and settle all the accounts relating to the said bridge and causeway, and shall make their report thereupon to the next Court of Appeal for the said county after their appointment as aforesaid; which account and settlement when so made and adjusted shall be signed by the said commissioners and the committee settling the same, and then shall be received and filed among the records of the said court; and if the said commissioners or a majority of them shall neglect or refuse to make such annual settlement as aforesaid, such neglect or refusal shall be deemed and taken to be a forfeiture of their office or appointment; and others shall be appointed thereto, as is at present by law directed in case of vacancies.

26 neglect—  
forfeiture of  
office

*Passed February 9, 1796.*

## VII.

1802 AN ACT for erecting and keeping in good repair, a draw-bridge.  
LITTLE CR'K. over Little creek.

Whereas the erection of a draw-bridge over Little creek at or near the place where the public road now runs to Little creek landing, would be of great public utility and more especially of advantage to the good people residing in the necks of Little creek and St. Jones respectively;

Section 1.—[By this section commissioners are appointed to build the bridge.]

1 Space for  
draw, &c.  
(u) altered [4]

Sect. 2. [It is provided, that a space, of at least [twenty (a)] feet for the waters of the creek to flow through, and of at least [nineteen (a)] feet for a draw, be left] for the accommodation of all such persons as may have occasion to pass and repass with any boat or vessel through the said bridge; and the said persons so passing and repassing with their boat or vessel are hereby directed to raise and let down the said draw or platform in such manner, as that the same receive no damage thereby under the penalty of four dollars for every such neglect or offence therein, to be recovered with costs of suit before any Justice of the Peace for Kent county by any person, who will sue for the same, one half thereof

2 Penalty for  
damaging it

to be applied to the use of the party suing for the same and the other half thereof to the use and for the purpose of maintaining the said bridge in good order and repair.

SECT. 5. The said draw-bridge, after it shall be so built, erected, finished and completed, shall be deemed and taken to be a public highway, free for all persons whomsoever to pass and re-pass over and across the same free from toll or pontage; and the said draw-bridge is hereby directed to be kept in good order and repair in the same manner, that other bridges in Kent county are directed to be kept.

3 A public highway (Roads and Bridges 7)

*Passed at Dover, February 5, 1802.*

A SUPPLEMENT to the Act entitled, "*An Act for erecting and keeping in good repair a draw-bridge over Little creek.*"

1816

Section 1. The space between the abutments of the said bridge and over the channel of the said creek, for the accommodation of such persons as may have occasion to pass through the said bridge with boats and vessels, shall be increased to the width of twenty-eight feet in the clear; and it shall and may be lawful for the Levy Court of Kent county and they are hereby required and enjoined, that the said bridge shall be altered so that there shall be left between the abutments of said bridge and over the channel of said creek the clear space of twenty-eight feet at the least, over which shall be constructed a good and sufficient draw of the proper length, with proper machinery and accommodations for raising or removing the same for the purpose of permitting vessels to pass and re-pass through the said bridge: *Provided*, that if the said bridge cannot be widened to twenty-eight feet as aforesaid for the sum of one hundred dollars by the contract of some person or persons, who will undertake the same, then and in such case the Levy Court shall not be obliged to cause said bridge to be so widened.

4 Space betw. abutments increased

Provided it can be done for \$100.

SECT. 2. It shall be the duty of any person or persons appointed by the Levy Court, or of the overseer or overseers of the roads, causeways and bridges, within whose limits the said bridge shall be, and be or they are hereby enjoined and required to cause the said bridge to be altered, and a draw to be constructed according to the foregoing provisions.

Duty of persons appointed for that purpose

*Passed at Dover, 14 February 1816.*

## VIII.

AN ACT for making the bridge across Naaman's creek, in the county of New Castle, a public toll bridge.

1801  
NAAMAN'S  
CREEK.

Whereas the erection and support of the numerous bridges over creeks and deep waters within the county of New-Castle, is extremely burdensome to the good people thereof; and whereas they have lately erected at a very considerable expense a new bridge over Naaman's creek on the main road leading from the borough of Wilmington to the city of Philadelphia; for repairing and keeping up said bridge or bridges, it is but reasonable that those who enjoy the advantages should contribute to their continuance,



and but just and right that the public expenses of the county should be thereby lessened :—

1 Toll bridge

Section 1. The bridge across Naaman's creek in the county of New-Castle, on the State road leading from the borough of Wilmington to the city of Philadelphia shall be deemed, held and taken, and the same is hereby declared, to be a public toll-bridge, for the passing and repassing whereof the rates of toll or pontage hereinafter prescribed and set forth shall be payable to and for the uses hereafter mentioned.

2 Collector appointed

Sect. 2. The commissioners of the Levy Court and Court of Appeal be and they are hereby authorized, empowered and directed at their meeting in February next and annually thereafter to nominate and appoint some suitable person for the purpose of collecting and receiving the rates of toll or pontage hereinafter prescribed ; and the person so appointed shall, as soon thereafter as he conveniently can and before he enters upon the duties of his said appointment, give bond with one or more sufficient sureties, with a warrant of attorney annexed thereto, to confess judgment in the penalty of one thousand dollars to the Treasurer of the said county of New-Castle, conditioned for the true and faithful performance of the duties reposed in him as collector and receiver of the tolls of the said bridge, and that he will render a true and perfect account verified by his oath, to the said commissioners of the Levy Court and Court of Appeal at their annual session, of all and every sums or sum of money which shall come to his hands or possession as collector and receiver of the said tolls, and the same or the balance thereof (after a reasonable allowance thereout for the time and trouble of collecting and receiving the same) shall and will faithfully and truly discharge and pay into the hands of the said Treasurer.

4 Tolls

Sect. 3. The person, who shall be appointed collector and receiver of the tolls of the said bridge under the regulations of this Act, shall take and receive for toll or pontage over the same the rate and prices following, to wit : for every single horse and rider, three cents ; for every led horse, ox, cow or heifer, one cent ; for every sheep or hog half cent ; for a coach or other pleasurable carriage with four wheels drawn by four horses or more, and passengers, twenty-five cents ; and for the same carriages drawn by two horses, twelve and a half cents ; for every stage-wagon drawn by either two or four horses or more, eighteen cents ; for a chair, sulkly or sleigh with a driver, six cents ; for a wagon or cart with four or more horses or oxen and driver, ten cents ; for every other cart or wagon with less than four horses or oxen and driver, four cents ; provided that no foot passenger shall pay any toll.

5 Unlawful toll

Sect. 5. If any person having the care and keeping of the said bridge shall exact or demand greater rates or prices for the passing and repassing the same, than are herein before prescribed and specified, for every such offence so by him committed he shall forfeit and pay any sum not exceeding ten dollars, one moiety thereof to the party grieved and the other moiety to the Treasurer of said the county for the use of the county, to be recovered by indictment and conviction in the Court of General Sessions of the Peace for the county aforesaid.

6 penalty

7 Collector's Account

Sect. 6. The person or persons to be appointed as aforesaid col-

lector or receiver of the said toll or pontage shall account at his annual settlement with the commissioners of the Levy Court and Court of Appeal aforesaid, and verify the truth and justice of the entries of all the receipts of the tolls and pontage aforesaid on oath; and the sum or sums of money found due from the said collector or receiver, on settlement with the commissioners of the Levy Court and Court of Appeal annually as aforesaid shall by him be paid into the hands of the County Treasurer (a) to and for the use of the said county to be applied to the support, maintenance and erection of bridges lying over creeks and deep waters, which by the laws of this State are to be erected and supported at the common expense of the said county. *Provided nevertheless*, That the said commissioners of the Levy Court and Court of Appeal shall make a reasonable and competent allowance, such as they shall deem proper, from and out of the said tolls or pontage, to the said collector or receiver, as a compensation for his time and trouble in collecting and receiving the same.

(a) quarterly  
(9)

S allowance  
to collector

*Passed at Dover, January 30, 1801.*

**A SUPPLEMENT to the Act for making the bridge across Naaman's creek, in the county of New-Castle, a public toll bridge.** 1802

Section 1. The tolls to be collected from said bridge shall be paid quarterly by said collector to the treasurer, only retaining one fourth part of the allowance that may be annually made him, by the commissioners of the Levy Court of said county; and all persons desirous of commuting shall hereafter commute annually with the said commissioners of the Levy Court for such sum or sums of money, as the said commissioners of the Levy Court may think proper; and all and every line or lines of stages shall pay toll or pontage and none be excepted; any thing in the said act to the contrary notwithstanding.

9 Collector of  
tolls to pay  
quarterly

*Passed at Dover, February 3, 1802.*

**AN ACT repealing certain Acts therein mentioned.**

1813

Section 1. As soon as the county of New-Castle shall be fully repaid the expense of erecting and maintaining the bridge over Naaman's creek, then the Act entitled "An Act for making the bridge across Naaman's creek, in the county of New-Castle, a public toll bridge," and the Act entitled "A supplement to the Act for the making the bridge across Naaman's creek, in the county of New-Castle, a public toll bridge," shall be and the same are hereby repealed.

10 Provision  
for repeal

Sect. 2. The Levy Court of New-Castle county shall lay a fair statement of expenditures on the said bridge and of all the tolls collected on the same before the General Assembly at their session in January next.

11 Account  
before Gen'l  
Assembly

*Passed at Dover, February 2, 1813.*

## IX.

1913  
NEWPORT  
BRIDGE

AN ACT to incorporate a company to erect a draw-bridge over the Christiana creek at the village of Newport, and for other purposes therein mentioned.

1 Corporate  
name

[By section 2, the company are incorporated by the name of the *The Newport Bridge Company.*]

2 Description  
of bridge (5)

Sect. 6. The president and managers of the Newport bridge company shall at their own proper costs and charges erect a draw bridge across the Christiana creek at the village of Newport, where the public ferry is kept across the said creek, of the following description: to wit, the bridge shall be built upon piles at least twenty feet from each other; and the said bridge shall be of the breadth of not less than twenty feet, and be of good durable timber, with a draw of the length of thirty feet over the channel and at right angles with the said channel; the said company shall provide and at all times maintain such platforms, buoys and other accommodations for rendering the passage of shallops and other craft, navigating the said creek, through the said draw, as safe and easy as practicable, and so as to occasion to the said vessels as little detention, interruption or inconvenience as possible; which draw shall at all times on the approach of any masted vessel or vessels be drawn at the expense of the said Newport bridge company, and that without any let or hindrance to the said vessel in passing and repassing at all times, and without any charges or costs to such masted vessel for drawing said bridge, under and subject to the penalties and forfeitures hereinafter provided: *Provided nevertheless*, that in the construction or erection of the said bridge, abutments or wharves, it shall not be lawful to erect or put up any wharf or abutment on either side of the said stream or creek, lower than high water mark of the said stream or creek.

3 draw—  
length

4 drawn with-  
out hindrance  
or charge

5 no abutmt  
lower than  
high water  
mark

6 Bridge—  
property of  
corporation

Sect. 9. For and in consideration of the expenses, that the stockholders will be at in the erecting of the said bridge and in the maintaining and keeping of the same in repair, the said bridge and works with all their profits shall be and the same are hereby vested in the said corporation forever; and it shall be lawful for the said president and managers, after the said bridge shall be erected, to appoint a toll-gatherer, and to demand and receive the following tolls or pontage for crossing the said bridge: to wit, for every single horse and rider, four cents; for every led horse, ox, cow or heifer, two cents; for every foot-passenger, one cent; for every sheep and hog, one cent; for a coach or other four-wheel carriage and pair of horses and passengers, eighteen cents; for a chair or sulky, horse and rider, ten cents; for a cart, one horse and driver, laden or unladen, ten cents; for a wagon, laden or unladen, two horses and driver, eighteen cents; for any other horse, mule or ox in a cart or wagon, two cents; for any sleigh or sled, with one horse, ten cents; every other horse, two cents.

7 Tolls  
[8-9-11]

8 Computa-  
tion

Sect. 10. Every person or persons, who shall prefer an annual contract for the use of the said bridge, shall be entitled to the benefit of the same, for himself and family, for the sum of four dollars

per annum to be paid in such manner, that a quarterly payment shall always be in advance; and if any person or persons, who wish to make such contract, shall think the said annual payment unreasonable and disproportionate to the number of their family and their use of the said bridge, the party so aggrieved shall choose one freeholder and the president of the said Newport bridge company shall appoint another freeholder, who shall decide what reduction shall be made from the annual payment herein before specified; and in case the two persons so chosen cannot agree, they shall choose a third person; and then the three persons or a majority of them shall decide as aforesaid; or in case the said president shall neglect or refuse to choose a freeholder for the space of ten days, then the freeholder chosen by the party aggrieved as aforesaid shall decide what reduction ought to be made, which shall be the commutation for the current year.

Sect. 11. If the president and managers or any person or persons by them appointed and having the care and keeping of the said bridge shall exact or demand any greater prices or rates than what are herein before prescribed and specified, he or they so offending shall for any such offence, forfeit and pay any sum not exceeding twenty dollars, one moiety thereof to the party aggrieved and the other moiety to the Trustees of the poor for the use of the poor of said county, to be recovered as debts to the same amount are recoverable by the laws of this State. 9 Unlawful toll

Sect. 12.—[This section provides for compensation to New-Castle county for the wharves at Newport Ferry to be paid in shares of the stock of the company, giving to the Levy Court of said county authority to appoint a member to vote on these shares, and vesting the wharves &c. in the corporation.] 10 Wharves at Newport Ferry [15-16]

Sect. 13. If any person or persons shall refuse or neglect to pay the rate of pontage or tolls as aforesaid, it shall and may be lawful for the person or persons having the care and collection of the pontage or toll of said bridge to refuse passage to any such person or persons, until he, she or they shall comply, and pay the pontage or toll as aforesaid. 11 Passage refused to persons refusing toll

Sect. 14. The president and managers of the said Newport bridge company shall for the safety of travellers as well as the navigation place, or cause to be placed on each side of the draw a lamp on suitable posts, which lamps shall be lighted within one hour from the setting of the sun and continue lighted until daylight; and the said president and managers of the aforesaid company or their toll keeper shall forfeit and pay for every night the said lamps shall not be lighted, the sum of ten dollars to be recovered as other fines in this Act and applied in the same manner. 12 Lamps

Sect. 15. If any person or persons shall cut, injure or destroy any piece or pieces of timber or plank or planks or other things belonging to the said Newport bridge, or shall remove the same from the said bridge, or in any otherwise wilfully damage the same, or shall extinguish the lamps aforesaid, or shall cut down or otherwise destroy the draw or other improvements made by the said company, and being thereof convicted upon the oath or affirmation of one or more credible witness or witnesses before any Justice of the Peace of New-Castle county, shall pay, over and above the da- 13 Penalty for injuring bridge

mages done to the said bridge and works, the sum of thirty dollars to be recovered under the hand and seal of the Justice of the Peace before whom the conviction was had, to be applied, one half thereof to the use of the said company, and the other half to the use of the poor of New-Castle county.

14 Draw—  
not in repair,  
or not attend-  
ed

penalty  
(18)

penalty.  
(18)

Sect. 16. The president and managers of the said Newport bridge company shall at all times keep and maintain the draw of the said bridge required to be constructed by this Act as well as the platforms, buoys and other accommodations for the expediting of the passage of vessels through the said bridge herein before directed to be provided, in good order and sufficient repair, and at all times after the erection of the said bridge, and during its continuance give or cause to be given good attendance at the said bridge to draw or raise the same on the approach of any masted vessel intending to pass the draw, so as to have the same removed by the time such vessel or vessels, to pass and repass through the said draw, free from all manner of toll; and if the president and managers or any person or persons having the care of the bridge and draw shall neglect or refuse to give good and faithful attendance at the said draw, or to raise the same, so as to permit the passage of all vessels free from toll, such person or persons, or the president and managers of the said bridge so neglecting or refusing shall for each and every offence forfeit and pay to the person or persons aggrieved, for every fifteen minutes, his, her or their vessel or vessels shall be detained by the default or neglect of the parties aforesaid, the sum of ten dollars to be recovered as other penalties in this Act.

15 Survey of  
wharves,

16 thirty feet  
from the cen-  
ter for use of  
company

17 public  
high-way

18 Notice of  
approach of  
vessel

19 Penalty  
for neglect

Sect. 17. The freeholders directed to be chosen and appointed to view the wharves at the village of Newport shall cause a survey of the said wharves on each side of the Christiana creek to be made and returned with their valuation, a correct map or plan of the same into the office of the clerk of the peace of New-Castle county, who shall record the same with the return of the said valuation, and it shall at all times be lawful for the said Newport bridge company to have and use from the center of the said wharves and parallel with the same, thirty feet on each side for the use of said company, and the said bridge shall be, and the same is hereby declared to be a public highway, free for all and every citizen of the United States to pass and repass at all times, they paying the toll or pontage in this Act mentioned.

Sect. 18. If the commander of any vessel approaching the said bridge shall cause a horn or shell to be loudly and distinctly blown by some person standing on the deck of such vessel, at the distance of half a mile from said bridge, and shall cause the same to be steadily repeated, as often as the nature of the case will admit of, as the said vessel approaches the said bridge, the same shall be considered as full and sufficient notice of the approach of said vessel to said bridge; and in case the keeper of the said bridge shall neglect or refuse to have the draw of the said bridge removed by the time such vessel arrives thereat, the said company shall be answerable to the owner or owners of such vessel for all damages they may sustain by reason thereof, to be recovered before any Justice of the Peace of the said county, if not exceeding twelve

pounds, and if exceeding that sum, before any court of law of the said county, with costs and damages as in other like cases.

Sect 21. If the Levy Court of New-Castle county shall, after the year one thousand eight hundred and thirty-three, pay to the said Newport bridge company the sum which the said company shall have expended, the bridge hereby authorized to be erected with all the improvements thereto belonging, shall be vested in the county of New-Castle, and then this corporation created by this Act, shall cease to have any operation.

20 Terms for  
vesting  
bridge in N.  
Castle county

*Passed February 3, 1813.*

## X.

*AN ACT to incorporate a company to erect a draw-bridge over the river Christiana, at Wilmington, and for other purposes therein mentioned.* 1807

Section 1.—[This section provides for receiving subscriptions for the purpose of erecting a draw-bridge across the river Christiana at Wilmington, and opening a road from thence through Holland's creek marsh in such direction as shall be deemed most eligible and proper, to the fast land at or near the house of Major Peter Jaquett, of the width of eighty feet, inclusive of an allowance for making a drain on each side of the road for the purpose of raising the same above the level of the said marsh and for keeping the said bridge and road through the marsh aforesaid in good and sufficient repair, and for opening and making a road of the width of not less than forty feet nor more than sixty on the fast land from the said Peter Jaquett's to intersect the road leading from the public ferry over the said river below Wilmington to the town of New-Castle, where the said road crosses the division line between the lands of Major Peter Jaquett and Robert White, in the most direct line the nature of the ground will admit of.]

1  
WILMINGTON  
BRIDGE.

[By section 4 the company are incorporated by the name of the *Wilmington Bridge Company.*]

Sect. 6. [By this section James Stroud, Nehemiah Tilton, James Brindley, Samuel Canby and Joseph Shipley or a majority of them are authorized to fix the place of the bridge, and to lay out a road from the southerly abutment through Holland's creek marsh to the fast land near the house of Major Peter Jaquett and from thence to Read's, formerly Clark's corner, and also a road from said road near Jaquett's to the road leading from the public ferry below Wilmington to New-Castle; and they are to return a draft signed by them and by the surveyor by them employed, of said bridge and roads into the office of the clerk of the peace for New-Castle county to be by him recorded:]—and the said return, when made in the manner aforesaid, shall be conformed to by the said Wilmington bridge company, who shall erect the bridge and open the roads, as they are or shall be laid down in the said plot or draft, without any deviation therefrom; and the said bridge and roads shall forever thereafter be kept in good order and repair by the said company.

2 Corporate  
name of  
company  
3 Roads laid  
out

60 feet (13)

4 Width of  
bridge—  
draw, &c.

Sect. 8. \* \* \* \* \* the bridge shall be of the width of not less than twenty-five feet, with a draw of the length of thirty feet over the channel or deepest part of said river for the purpose of letting vessels pass and repass through the same; which draw shall at all times on the approach of any masted vessel or vessels be drawn at the expense of the said bridge company, and that without any let or hindrance to the said vessels in passing and repassing at all the times and without any charge or costs to such masted vessel for drawing said bridge, under and subject to the penalties and forfeitures hereinafter provided.

5 Tolls

Sect. 10. For and in consideration of the expenses the said stockholders will be at, not only in erecting the said bridge and making said roads and other works, but in maintaining and keeping the same in repair, the said bridge, roads and works, with all their profits, under the limitations aforesaid, shall be and the same are hereby vested in the said corporation forever, subject nevertheless to the conditions hereafter mentioned; and it shall and may be lawful for the said president and directors after the said bridge shall be erected and the said roads be opened and made passable, to demand and receive the following tolls or pontage for crossing said bridge: to wit,

	cents.
For every single horse and rider	6
For every foot passenger	1
For every coach, chariot or landau	37½
For every other four-wheeled pleasurable carriage	25
For every curricie	25
For every chair, sulky or other two-wheeled pleasurable carriage	12½
For every stage-wagon, with passengers	25
For every loaded wagon	25
not loaded	12½
For every loaded cart and three horses or oxen	18
For every sled or sleigh	12½
unloaded do. do. do.	9
For every loaded cart and one horse	6
unloaded do. do.	4
For every other horse, mule or ox in a cart or wagon	3
For driven or led horses, cattle or mules, each	1
For every sheep and hog	½

6 Commuta-  
tion

Sect. 11. Every person or persons, who shall prefer an annual contract for the use of said bridge, shall be entitled, for himself and his family, to all the benefits of the same, except as to stages for the conveyance of persons for hire, for the sum of six dollars to be paid in such manner, that a quarterly payment shall always be in advance; and if any person or persons, who wish to make such contract, shall think the said annual payment unreasonable and disproportionate to the number of their family and their use of the said bridge; the party so aggrieved and the president of the bridge company, shall choose a disinterested freeholder, who are hereby required to decide without further appeal, what reduction if any shall be made from the annual payment herein before specified.

Sect. 12. If the president, directors and company, or any person or persons having the care and keeping of the said bridge, shall exact or demand any greater prices or rates, than what are herein before prescribed and specified, he or they so offending shall, for every offence, forfeit and pay any sum not exceeding twenty dollars, one moiety thereof to the party grieved, and the other moiety to the Trustees of the Poor for the use of the poor of said county, to be recovered, as debts to the same amount are recoverable by the laws of this State.

7 Unlawful toll

Sect. 17. If any person or persons shall refuse or neglect to pay the rate of pontage or toll as aforesaid, it shall and may be lawful for the person or persons having the care and collection of the pontage or toll of said bridge or either of them to refuse passage to any such person or persons, until he, she or they shall comply and pay the pontage or toll aforesaid.

Passage denied on refusal, &c to pay toll

Sect. 18. The president, directors and company of the said bridge shall for the safety of travellers as well as of the navigation place or cause to be placed six or more lamps, at the expense of the said Wilmington bridge company, on a suitable number of posts to be erected on the said bridge; two at the southern end and two at the northern end of the said bridge and one on each side the draw aforesaid; which lamps shall be lighted every evening (after the erection of the said bridge,) within one 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 or collector of tolls, 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.

Lamps

Sect. 19. If any person or persons shall cut or injure or destroy any piece or pieces of timber or any plank or planks, or other things belonging to the said bridge, or shall remove the same from the said bridge, or shall in any wise voluntarily damage the same, or shall voluntarily extinguish or injure the lamps aforesaid, or shall cut down or otherwise destroy or injure any tree or trees planted upon the causeway aforesaid by the said company for ornament, or either of them, he, she or they so offending and being thereof convicted before any Justice of the Peace of New-Castle county upon the oath or affirmation of one or more credible witness or witnesses, shall forfeit and pay for every such offence, over and above the damage done to the said bridge, the sum of thirty dollars to be recovered under the hand and seal of the Justice of the Peace before whom such conviction was had, and to be applied, one half to the person or persons who shall sue for the same, and the other moiety to the use of the poor of New-Castle county.

8 Penalty for damaging the bridge

Sect. 20. The president and directors of the said Wilmington bridge company shall at all times keep and maintain the draw of the said bridge, for the free passage of vessels with fixed masts, required to be constructed by this Act, in good order and sufficient repair, and at all times after the erection of the said bridge and during its continuance give or cause to be given good attendance at the said bridge to draw and raise the same when required, and

9 Penalty, if draw out of repair, or unattended



peaceably, freely and quietly suffer every vessel and all vessels to pass and repass unmolested through the said draw, free from all and all manner of toll whatsoever; and if the president and directors or any person or persons having the care of the said bridge and draw shall at any time after the erection of the said bridge neglect or refuse to keep the draw of the said bridge in good and sufficient repair, or shall neglect or refuse to give good and faithful attendance at the said draw, or to raise up the same so as to permit the passage of all vessels (free from toll,) such person or persons or the president and directors of the said bridge company so neglecting or refusing shall for each and every such offence, forfeit and pay to the person or persons aggrieved, for every fifteen minutes his, her or their vessel or vessels shall be detained by the default or neglect of the parties aforesaid, the sum of ten dollars to be recovered as debts of the same amount are recoverable by the laws of this State.

10 Bridge and  
roads public  
highway

SECT. 21. The said bridge and roads in this Act directed to be erected and opened shall after the erection and laying out of the same be and they are hereby declared to be a public highway for all and every the citizens or inhabitants of this State and of the United States to pass and repass over and along, they paying the toll or pontage aforesaid; and for that purpose, the president and directors of the said Wilmington bridge company or their agent or agents shall at all times after the said bridge is erected, and the said roads are opened and made passable, give good attendance at the said bridge, and shall peaceably and quietly suffer every person or persons with their goods, chattels and effects whatsoever, to pass and repass unmolested over the said bridge and roads, they paying therefor the toll or pontage aforesaid.

11 Profits—  
excess over  
ten per cent.  
per annum—  
to school fund  
[12]

SECT. 23. When the net profits arising or accruing to the bridge company aforesaid from the tolls or pontage established by this Act shall exceed the sum of ten per cent. per annum, on the capital stock of the said bridge company, then the said company, for each and every year in which the same shall happen or take place, shall pay into the hands of the Trustee of the fund for establishing schools in this State the respective sums, which may be in their hands after deducting the said net profits of ten per cent. per annum on their said capital stock, which said sums respectively in each and every year as aforesaid, the Trustee is hereby empowered to sue for and recover by action on the case in any court of record within this State.

12 Books open  
to Trustee

SECT. 24. The books of accounts belonging to the said bridge company shall at all reasonable times be open to the said Trustee.

*Passed at Dover, January 20, 1807.*

1807

### A SUPPLEMENT to said Act.

13 Width of  
road

Section 1. That part of the road directed by the aforesaid Act to be laid out from the stake in the fast land near major Peter Jaquett's dwelling house to Read's formerly Clark's corner shall be of the breadth of sixty feet; and the said road and also all the parts of the roads laid out, or which shall be laid out under the

14 not altered  
by Gr. Sess.

aforesaid Act shall not be liable to be altered or changed by virtue of any orders of the Court of General Quarter Sessions of the Peace.

*Passed at Dover, August 10, 1807.*

—o—

## BRIDGES.

### I.

*AN ACT regulating the travelling over public bridges in New-Castle county.*

1823

Every stage driver driving a stage, and every other person driving any wagon, cart, coach, gig, chaise or any other carriage for the conveyance of persons or otherwise, over any public bridge in New-Castle county built at the expense of the county, shall check his horse, horses or team upon arriving at said bridges on either side thereof, and drive over the said bridges with his horse, horses or team in a walk; and if any person or persons shall intentionally and wilfully offend against this provision; every person for every such offence, shall forfeit and pay a sum not exceeding five dollars to be recovered before any Justice of the Peace in and for New-Castle county, and applied, one moiety thereof to the person suing, and the other moiety to New-Castle county, and paid to the Treasurer thereof, in an action at the suit of the informer; and further every person driving any stage, coach, wagon, cart, gig, chaise or other carriage for the conveyance of persons or otherwise, or riding on horse back over said bridge, shall keep on the right hand side or track of the bridge lately erected over Brandywine creek at the village of Brandywine; and every person offending against this provision shall for every offence forfeit a like penalty not exceeding the sum of five dollars, to be recovered and applied as aforesaid, before any Justice of the Peace for New-Castle county in manner aforesaid; and in case of any stage driver offending against either of these provisions, the proprietors of such stage or either of them shall be liable to pay the penalty incurred, and to be proceeded against before any Justice of the Peace for New-Castle county for the recovery thereof in manner aforesaid, and the penalty when recovered shall be applied as aforesaid; and it shall be the duty of the Levy Court of New-Castle county to put up an index board at each end of said bridge, explanatory of the provision of the aforesaid regulation, otherwise no fine or forfeiture shall be incurred; and further the Levy Court of New-Castle county is hereby directed to erect and keep two lamps regularly lighted through the night time on said bridge erected over Brandywine at the village of Brandywine.

1 Driving over bridges built at county expense—New-Castle county

in a walk  
2 non-compliance penalty

3 Bridge at Brandywine village—keeping to the right

4 Penalty on offenders

5 proprietors of stage liable &c.

6 Index board

7 lamps

*Passed at Dover, February 4, 1825.*

## II.

1827

8 Summit  
Bridge

*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 New-Castle county, belonging to the Chesapeake and Delaware Canal Company.*

9 Passed on  
right-hand  
side & in a  
walk—  
penalty on  
non-compli-  
ance

10 index-  
board

11 penalty  
for injury to  
bridge, &c.

12 Lamps

penalty

Sect. 1. 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 if any person or persons shall intentionally and wilfully 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 New-Castle county and applied, one moiety thereof to the person suing, and the other moiety to the Poor of New-Castle county and pay 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 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.

Sect. 2. 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.

*Passed at Dover, February 9, 1827.*

## I.

AN ACT to incorporate a company for cutting and opening two canals to facilitate the navigating of Christiana creek.

1821

1

CHRISTIANA  
CANAL.2 Corporate  
name2 Description  
of the canals

By section 2, the subscribers their successors and assigns are incorporated by the name of "The Christiana Canal Company."

Sect. 5. \* \* \* \* \*

one of the said canals shall be cut, opened and improved, through the marsh or low grounds of Jeremiah Lewden, beginning at the distance of about forty perches below the wharves of the said village on the south side of the said creek, and at or near the upper part or point of the great bend of the said creek next below or to the eastward of the said wharves, and running thence through and across the same marsh or low grounds by a straight line forty-six perches on to its intersection with the said creek in its course further eastward; and the other of the said canals shall be cut, opened and improved through the wild or unimproved marsh or low grounds of Samuel Johnson, beginning in the said creek at the upper part or point of the lesser bend of the said creek next below and to the eastward of the said greater bend, about one hundred and thirty-eight perches below or to the eastward (following the courses of the said creek) of the eastern point of intersection of the said forty-six perch line with the said creek, and running thence on the north side of the said creek by a straight line seventeen perches across and through the same wild or unimproved marsh or low ground to its intersection with the said creek in its course further northward and eastward, and moreover to make and render the said canals navigable for vessels navigating the said creek, and so to keep and continue the same canals thereafter.

\* \* \* \* \*

Sect. 6. \* \* \* \* \* The tolls 4 Tolls

for passing the said canals or either of them shall be as follows, to wit: for every vessel laden in whole or in part with goods, wares or merchandise or articles of property, fifty cents; for every other vessel, thirty-seven and a half cents; for every scow or lighter, whether laden or unladen, twelve and a half cents; for every raft of lumber, fifty cents; the said respective tolls and rates shall be paid to the toll-gatherer of the said company by the owner or skipper or person having the charge or command of each respective vessel bound or passing up the said creek after passing the said canals or either of them at Christiana village aforesaid, without delay, and by the owner or skipper or person having the charge or command of each respective vessel bound down the said creek, intending to pass through the said canals or either of them before such vessel leave or depart from the port or harbor of the said village, and in case of neglect or refusal on the part of the person or persons bound to pay the said tolls, the said toll-gatherer shall without delay cause the said toll to be proceeded for and recovered in the name of the said company against the person or persons bound to pay the same before any Justice assigned to keep the peace, &c. in and for New-Castle county, together with

[8]

5 how recovered

neglect or refusal to pay penalty.

appropriation

the further sum or penalty of four dollars, as debts under forty shillings are recoverable agreeably to the laws of this State, and shall be paid when so recovered and received by the said toll-gatherer into the hands of the said Treasurer for the use of the said company, and in like manner all other tolls by him received from time to time.

6 Accounts of all the receipts & expenditures to be rendered to Legislature every fifth year

Sect. 11. The said president and managers shall at the expiration of every fifth year from and after passing this Act, render to the Legislature of this State a fair and just account of the tolls and emoluments received by the said company from the said canals, the capital expended in cutting the said canals, the costs, charges and incidental expenses incurred, adding thereto nine per cent. annually on the said capital expended including in the said capital any monies that may be paid by the said company as damages of the said Lewden and Johnson; and when and as soon as it shall appear to the said Legislature from the said accounts so as aforesaid to be rendered, that the said stockholders have been fully paid and reimbursed the capital to be expended by them as aforesaid, out of the tolls and profits of the said canals, then and from thenceforth the said corporation shall be dissolved, and this Act and the right to take tolls from vessels passing the said canals shall cease and determine.—*Passed at Dover, January 29, 1821.*

7 on reimbursement of capital expended, corporation shall be dissolved

1823

**AN ADDITIONAL SUPPLEMENT to the Act entitled, “An Act to incorporate a company for cutting and opening two canals to facilitate the navigation of Christiana creek.”**

8 Tolls for the first canal

(74).

Section 1. “The Christiana canal company,” having completed the canal first mentioned and described in the Act to which this is an additional supplement, the president and managers of the said company are hereby authorized to appoint a toll-gatherer or toll-gatherers to collect and receive from the owner or person having charge and command of each and every vessel passing through the said canal, the tolls and rates hereinafter mentioned; that is to say: for every vessel laden in the whole or in part with goods, wares or merchandise, or articles of property, thirty three cents; for every other vessel, twenty-five cents; for every scow or lighter, whether laden or not, twelve and one half cents; for every raft of lumber, thirty-three cents; which tolls and rates shall be paid in the same manner, and collected and recovered by the same means and proceedings, and the same forfeiture or penalty shall be incurred for neglect or refusal, and recovered in the same manner as are provided by the sixth section of the Act to which this is an additional supplement, in relation to the tolls and rates therein mentioned.

*Passed at Dover, February 4, 1823.*

## II.

1818

**AN ACT to authorize the cutting of a canal from Back bay or Muddy creek in the county of Sussex to the Delaware bay at a place called the Mud banks.**

9 Back bay canal

[By section 1, Joseph Haslet, Samuel Paynter, Henry Hudson,

Peter F. Wright and Isaac Clows or a majority are authorized to lay out a canal; and a certificate of their proceedings is to be recorded in the office for recording of deeds in Sussex county.]

Sect. 3. The said canal, after it shall be completed, shall be deemed and taken to be a public and common highway.

*Passed February 8, 1818.*

—o—

## CANTWELL'S BRIDGE.

*AN ACT for laying out the lands escheated to the State of Delaware, at Cantwell's Bridge, in New-Castle county.* 1821

Sect. 1. [By this section John Merrit, Outten Davis, Jacob Vandegrift, John Reynolds and John Clark or a majority of them are authorized to survey the escheated lands at Cantwell's Bridge and lay out as a public street, the road used as the principal street, and to lay out a road from the point of intersection of the State road to Wilmington with the northeastern boundary of the escheated land to such point in the aforesaid street, as to be at right angles therewith, and to lay out in the part of said escheated land lying on the southeastern side of said road so many streets and lanes as they shall think proper—such streets to be parallel to the principal street aforesaid or at right angles, and the breadth not less than sixty feet.] <sup>1 Commissioners</sup>

Sect. 3. [By this section said commissioners or a majority of 2 Return them are to return the survey of the roads, streets, lands &c. into the office for recording of deeds in New-Castle county, to be recorded.]

Sect. 6. [By this section the commissioners are required to lay out a school house lot not exceeding one hundred and twenty feet front, and two hundred feet in depth, for the use of the inhabitants of Cantwell's Bridge and its vicinity.] <sup>3 School-house lot</sup>

*Passed at Dover, February 2, 1821.*

—o—

## CAPE HENLOPEN.

*AN ACT authorizing the Court of General Quarter Sessions of the Peace and Gaol Delivery of the State of Delaware to appoint Trustees to take charge of and secure the rents of the lands and marsh commonly called Cape Henlopen, for the use of the county of Sussex.* 1814

Sect. 1. It shall and may be lawful for the Court of General Quarter Sessions of the Peace and Gaol Delivery at their next session, and at their spring session every third year thereafter in the county of Sussex aforesaid, to appoint three good and substantial <sup>1 Trustee appointed</sup>

- freeholders of said county, one of whom only shall reside in Lewes and Rehoboth hundred, to take possession of and rent to the highest and best bidder in lots, the aforesaid lands and marsh for any time not exceeding three years; and the money arising therefrom to be paid over to the County Treasurer for the use of the county of Sussex only.
- 2 County Treasurer      Sect. 2. The said Trustees shall have power to appoint one of their body to be treasurer of said board, who shall by virtue of said appointment receive all and every sum or sums of money, that may be due or arising from the rent of said lands or marsh or sale of spars or other timber sold to the master or masters, owner or owners of any vessel or vessels that may or shall hereafter be cast away, stranded, or otherwise injured, on or near the said cape; in which case only the said Trustees shall have a right or power to sell timber spars or fire-wood from or on the said cape.
- 3 Treasurer of Trustees      Sect. 3. The said Trustees shall keep a true and correct account of all the monies by them received for spars, timber or rent of said marsh and cape, in a book or books provided by the treasurer of said board for that purpose, and each and every year thereafter settle said accounts with the Levy Court commissioners for the county of Sussex, and in the space of ten days thereafter pay over to the County Treasurer such sum or sums of money, as may by them be found due to said county for rent of marsh, sale of timber or fines recovered, after reserving therefrom such allowance as shall be made by the Levy Court to said Trustees for their services.
- 4 when timber &c. cut on cape (Crimes, &c. II)      Section 4. If any person or persons shall cut any fire-wood, timber, masts or spars, or turn on any cattle, horses or hogs on the said lands or marsh on the said cape, without having first contracted with the said Trustees or a majority of them, such person or persons so offending shall be liable to have a suit brought against them by the Trustees or a majority of them, before any Justice of the Peace in and for said county, for any sum not exceeding thirty-two dollars in like manner, as other debts of trespass are recoverable, any law, usage or custom to the contrary notwithstanding.
- 5 Trustee's accounts      *Passed at Dover, February 15, 1814.*
- 6 settle with Levy Court
- 7 allowances
- 8 Trespasses on cape—(Crimes, &c. 2-5)      suits of Trustees before Justice

## COUNTY LINES.

1775 *AN ACT for the more effectual ascertaining and fixing the limits of the several counties within this government, and for remedying some inconveniences that may arise by the late establishment of the boundaries and divisional lines between the same and Maryland.*

Section 1, 2.—[It is herein recited, that the divisional lines between the province of Maryland, the counties of New-Castle, Kent and Sussex and the province of Pennsylvania had been run by commissioners and marked out with stones, pillars and other land

marks and approved by the King by an order in council dated 11 January 1769.]

Sec. 4. The line dividing the counties of New-Castle and Kent, continued from the mouth of a branch issuing from the main branch of Duck-creek and opposite part of Enoch Jones's land on the Kent side and Richard Nash's land on the New-Castle side and running from thence up the said branch on the several courses thereof westwardly six hundred and two perches to a white oak corner tree of Benjamin Hazle and Richard Hollet's lands at the head of said branch, from thence continued due west one thousand seven hundred and eight perches, till it intersects the tangent or divisional line between these counties and Maryland, where the same crosses the Cyprus Branch, shall be deemed, taken and held the boundary between the said counties of New-Castle and Kent; and the line between the counties of Kent and Sussex, continued from a fork of Mispillion-creek at the junction of the Tan-Trough-branch and Beaver-dam Branch, running up the Tan-Trough-branch with the several courses thereof eight hundred and eight perches to the head thereof, thence south westwardly to a small fork of a small branch of the river Nanticoke, thence down said branch to the southward end of a Beaver-dam on the west side of a Beaver-pond the original temporary division between Kent, Sussex and Maryland, and from thence due west two thousand eight hundred sixty and four perches to the north and south or tangent line aforesaid, shall be deemed, taken and held the boundary between the said counties of Kent and Sussex.

1 Divisional line between New-Castle and Kent

2 also between Kent & Sussex (a)

Sect. 5. The Justices of the Peace for the several counties of this government may and shall, as soon as conveniently may be, in the Courts of General Quarter Sessions to be held for the said counties respectively ascertain the bounds and limits of the several ancient hundreds within the same and lay out such and so many new hundreds, as may be found necessary and convenient.

3 Boundaries of hundreds

Passed Sept. 2, 1775.

—o—

## DOVER.

### I.

AN ACT for vesting the Court House and public offices with the lots of ground whereon the same are erected together with another lot adjoining the same on the north side thereof situate in the town of Dover in the county of Kent, in Trustees for the uses therein mentioned.

1775

Whereas the lot of land situate in the Court House Square in

1 Court House & Lots in Dover

(a) By a resolution of the General Assembly of February 6, 1823, Ralph Robinson and John Richards of Sussex county, and John Tatman and William Hopkins of Kent county, are appointed commissioners to run and mark the division line between Kent and Sussex from the south prong at the head of Rigg's mill pond to the line of the State of Maryland; and William Johnson is appointed surveyor to assist them.



the town of Dover and described in a plot or survey thereof recorded in the office for recording of deeds in the county of Kent, and another lot of land divided from the same by an alley, called the Court House Alley, on the north side of the said lot first mentioned, have been and now are considered, taken and held as ground belonging to the public, and accordingly a Court House and a building for keeping the records of the said county of Kent have been erected thereon at the charge of the same county : *And whereas* there is another lot of land lying on the north side of the said lot last mentioned and on the east side of the Court House Square aforesaid, numbered in the town plot of Dover twenty-seven, and contained within the bounds following, *to wit*, *Beginning* at a corner of the office lot numbered in the aforesaid town plot thirty-three and running with the line of the said office lot east by north ninety-seven feet, then south by east two perches to the Court House Alley, then by the said alley east by north six perches, then north by west three perches five and an half feet to the corner of lot number thirty, then with the said lot west by south eleven perches fourteen and an half feet to the Court House Square aforesaid, and then therewith south by east twenty-two feet to the place of beginning ; laid out for twenty-eight and an half square perches, which hath been purchased at the expense of the said county of Kent, from a certain James Wells and Rebecca his wife, who conveyed the same by their deed bearing date the thirteenth day of March last, to a certain Jacob Stout, Esq. in trust for the inhabitants of the said county of Kent. Now to the end and intent that the said three lots of land, and the buildings thereon erected or hereafter to be erected, together with the said alley, so far as the first recited lot extends along the same, may be effectually secured for the Public, and that the legal estate and inheritance therein may be vested in Trustees to and for the uses and purposes herein after mentioned and specified.

2 vested in  
Trustees

Section 1. The said lots of land, alley and buildings and all the immunities, improvements, advantages, hereditaments and appurtenances to the same belonging or in any wise appertaining and the remainder and remainders, reversion and reversions thereof shall from and after the passing of this Act be settled upon and vested in Caesar Rodney, Charles Ridgely, Samuel Chew, William Killen and Jacob Stout esquires and the survivors and survivor of them and the heirs and assigns of such survivor forever ; upon the trusts nevertheless and to and for the ends, intents and purposes, and subject to the uses herein after mentioned, expressed and declared ; *That is to say*, As to the said Court House, until another shall by order of the Levy Court for the said county of Kent be built in the place and stead thereof upon some part of the said lots and alley, and such other Court House when built—to and for the use of the Justices of the Supreme Court of this government for the holding the said court for the said county of Kent, as long as the said court shall from time to time be adjourned and continue, and at all other times for the use of the Justices of the Court of Common Pleas, and Justices of the Court of Quarter Sessions for the said county of Kent for the holding courts therein, and for such other uses and purposes, as they shall direct, for the

3 The uses  
(General Assembly—4)

(Auditor's office)—p. 566

service of the said county ;—and as to the said building for keeping the records of the said county of Kent, until other buildings are erected for that purpose, and such other buildings when erected—the same shall be for the use of the clerks of the several courts and other public officers of the said county of Kent, from time to time and at all times forever, as public offices, subject to such regulations as the Justices of the said Courts of Common Pleas and Quarter Sessions for said county shall think proper to make from time to time concerning the same ;—and as to the said three lots of land and alley, whereon the same Court House and office are built—the same be for the use of the said county of Kent, subject to the direction of the Justices of the Courts of Common Pleas and Quarter Sessions for the said county forever: And upon this further trust and confidence, and to this further end, intent and purpose, that the said Caesar Rodney, Charles Ridgely, Samuel Chew, William Killen and Jacob Stout and the survivors and survivor of them and the heirs of such survivor shall from time to time and at all times hereafter permit and suffer such suit and suits, action and actions to be commenced and prosecuted in his or their names, and also make, seal, deliver, execute and acknowledge such deed or deeds, conveyance or conveyances, fines, recoveries or assurances in the law whatsoever, for the said three lots of land and alley, buildings, tenements and hereditaments settled and vested in the said Trustees, as aforesaid or any part or parcel thereof to such person or persons, and in such manner and form but to the uses aforesaid, as the Justices of the Courts of Common Pleas and Quarter Sessions for the county of Kent aforesaid shall at any time or times hereafter direct and appoint; so always that the said Caesar Rodney, Charles Ridgely, Samuel Chew, William Killen and Jacob Stout and their heirs, executors and administrators and every of them be well and truly indemnified, saved and kept harmless of and from any costs, charges, trouble and molestation whatsoever, which may arise for or by reason of such suits, deeds, conveyances, fines, recoveries or assurances so to be commenced, prosecuted, made and executed.

Sect. 2. And *whereas* it may be found convenient to erect a building upon the alley before mentioned, called the Court House Alley, whereby the same will be stopped to the injury of the owners of lands lying to the east-ward of the lots herein before described; in such case it may and shall be lawful to and for the commissioners for disposing of lots in the town of Dover, and they are hereby required to lay out another alley of the same width with the present Court House Alley, through the said lots situate to the north thereof, as a passage for the owners of lands adjoining the same, and return a description of such alley in writing, under their hands, into the office of the clerk of the peace for the said county of Kent, there to be entered of record; which alley so to be laid out, shall continue open forever: any thing herein contained to the contrary notwithstanding.

Sect. 3. This Act shall be deemed, adjudged and taken to be a public Act and shall be judicially taken notice of as such by all Judges, Justices and other persons whatsoever, without specially pleading the same.

Passed March 29, 1775.

## II.

1829

## AN ACT for establishing the boundaries of the town of Dover, and for other purposes therein mentioned.

6 Election for  
commission-  
ers [15]

7 their powers

8 return

9 restriction

10 Stones, &c  
at intersect'n  
of streets

Section 1. 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 skillful 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 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, (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, shall not extend the same in a northern and southern direction more than eighty perches from the center 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 straightening 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.

Sect. 2. The said commissioners shall fix posts or stones in the earth in the center 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 elec

ted, 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 persons 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 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.

11 Penalty  
for removing

Sect. 3. 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, 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.

12 Appeal

13 security

Sect. 4. In case of an appeal or appeals in manner aforesaid, the person or persons who may conceive him, her or themselves to be aggrieved, shall be the appellant or appellants, and the commissioners for the time being or a majority of them, shall be the appellee; and the 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 very right of the matter and law of the land.

14 Proceed-  
ings on appeal

Sect. 5. 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

15 Clerk of  
peace to hold  
election (H).

16 Notice

17 Voters

the time and place of holding said election: he shall take to his aid two freeholders of the said town to assist him in holding such election: at such election 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. 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 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.

18 Oath of officers of election

Sect. 6. 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 election, which said oath or affirmation may be after the following form: *You ——— do solemnly swear on the holy evangelists 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 favor, 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.

19 Returns

20 Assessor

21 Tax duties

22 Assessment

Sect. 7. 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 estate 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 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 cost 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, 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

23 appeals

24 Tax

25 pumps,  
wells

26 ladders

27 foot paths

28 pavements

29 market  
house

30 party walls

31 par. tion  
fences

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.

32 Collector Sect. 8. The said commissioners shall have power and authority 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 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.

33 his powers

(Levy Court 43)

34 fees

35 oath

36 bond

37 Treasurer's bond Sect. 9. 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

38 Town Clerk 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.

39 Paym'ts by Treasurer Sect. 10. 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; he shall settle his accounts

40 settle'm'ts

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 the said treasurer shall deposit 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.

41 his fees

42 deposits

Sect. 11. 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 puddock 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 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.

43 Pavement before State-house &amp;c.

Sect. 12. 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, chattels, 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.

44 Pavements before private houses

45 abating nuisances &amp;c.

Sect. 13. 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 favor of those, to whom it may be due for services rendered or for materials furnished, the said town; and 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

46 Commissioners not to receive money



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 color of their said office.

47 incorporated

Sect. 14. 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 chattels, 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.

48 Fines,

Sect. 15. 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.

49 Vacancies

Sect. 16. If the place of any of the said commissioners shall become vacant by death, resignation or otherwise 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.

50 Ornamental trees, &c.

Sect. 17. 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 chattels, lands and tenements, of such neglecting or refusing proprietor.

SECT. 18. Nothing herein contained shall be construed or understood to affect the public roads running through, in or about 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.

This Act  
not to affect  
public roads

*Passed at Dover, February 16, 1829.*

—o—

## DOVER HUNDRED.

AN ACT to detach from Murderkill hundred a part thereof lying northerly of a division line in said Act described [and to change the place of holding the election.]

1823

Section 1. Murderkill hundred in Kent county shall be divided by the following division line, that is to say: Beginning at the mouth of the branch, upon which the mill and mill-seat late of Henry Molleston deceased, the mill and mill-seat late held by Samuel Howell deceased now of Thomas H. Howell, the mill and mill-seat late held by William Warner deceased, and the mill and mill-seat of William Allaband are situated, called Isaac's Branch, at the place where the said branch empties into St. Jones' creek or Dover river, and running thence up the said branch and through the mill-ponds of the said mills, by and with the water courses, to the mouth of a prong or stream emptying into the said branch from the southward, near the head of Allaband's mill-pond, and which prong or stream crosses the State road running from the line of Maryland near the River Bridges by Thomas' chappel through Camden to the Forest Landing, between the Poor-house and the house formerly of William Kirkley; and running from the mouth of said prong or stream last mentioned up the same by and with the water courses, to the said State road, and thence toward the State of Maryland by and with the said State road to the line of the said State of Maryland called the Stone line: and all that part of Murderkill hundred lying northerly of the said division line beginning at the mouth of the said first mentioned branch, and running as aforesaid to the line of the State of Maryland, be and the same hereby is detached and set off from the said hundred and united to St. Jones' hundred, and the said part of Murderkill hundred lying northerly of said division line and St. Jones' hundred shall form and be one hundred, and shall be called Dover hundred; and the residue of Murderkill hundred lying southerly of said division line shall form and be one hundred, and shall be called Murderkill hundred.

1 Murderkill  
hundred—  
how divided

2 Dover hun-  
dred

3 Murderkill  
hundred

*Passed at Dover, January 28, 1823.*

## DUCK CREEK AND LITTLE CREEK HUNDREDS.

1823 AN ACT to establish the line between Duck creek and Little creek hundreds in Kent county.

Division  
line of Duck  
creek & Little  
creek descri-  
bed

Section 1. The dividing line between Duck creek and Little creek hundreds shall commence at the mouth of Little duck-creek, thence up said creek binding with the several courses thereof to Register's mill, thence through the mill pond of the said Register's mill, Wail's heirs and Cloak's mills, with the main stream of water courses thereof, until it crosses the State road leading from Kenton to Sadler's cross-roads in the State of Maryland, thence with the said road to the Stone line so called, between this State and the State of Maryland; and the same to be and remain the dividing line between the said hundreds.

Passed at Dover, February 4, 1823.

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## FERRY.

## I.

1803 AN ACT for establishing and regulating a ferry over the river Delaware, at the town of New-Castle.

NEW-CASTLE

Whereas it hath been represented to the Senate and House of representatives of the State of Delaware in General Assembly met, by the petition of divers inhabitants of New-Castle county, that great inconvenience has for some years past been and still is experienced from the want of a well regulated ferry at the town of New-Castle, for the accommodation of travellers and others desirous of crossing the river Delaware from the said town; for the remedy whereof, it is prayed that an Act of the General Assembly may be passed for establishing and regulating a ferry over the said river at the town aforesaid:

And whereas it hath been further represented, that the brick house and wharf commonly called *The old ferry*, herein after described is the most suitable place for keeping the said ferry:—

1 Ferry at N.  
Castle across  
the Delaware

Section 1. A ferry shall be and hereby is established at the brick house and wharf in the town of New-Castle aforesaid, commonly called *The old ferry* formerly of George Monroe deceased and now of James M'Calmont, situated at the south easterly corner of Harmony and Front streets, for the transportation of travellers, horses, cattle, carriages and goods, from thence over the river Delaware; and it shall and may be lawful for the said James M'Calmont and such other person or persons, as may from time to time be the owner or owners, possessor or possessors of the said brick house and wharf, to keep and maintain a ferry at the place aforesaid for the purposes aforesaid, for and during the term of [twenty-one] years from the twenty-fifth day of March next ensuing, and to have, take and receive to his or their own proper use, all such sums of money as may arise therefrom, according to the rates herein after mentioned.

2 term  
thirty-one  
(18)

*Provided always,* That the said James M'Calmont or such other person as may be the owner of the said premises, do and shall within two years from the said twenty-fifth day of March next extend and carry out the said wharf at least one hundred and fifteen feet further into the river Delaware from the present end thereof, either by continuing the said wharf or by erecting a pier and bridge, and shall also annex a slip thereunto, so as to render the landing place safe and convenient for the purposes of a ferry.

Sect. 2. When the said wharf and landing place shall be completed as herein below mentioned, the owner or keeper of the said ferry shall at all times thereafter keep and maintain the said wharf and landing place in good order, condition and repair, suitable for passengers, horses, cattle, carriages and goods to pass and repass with safety, and also shall at all times be provided with good and tight boats, wherries or other vessels suited to such ferry, sufficient in size, strength, steadiness and accomodation for the safe and speedy transportation of passengers, horses, cattle, carriages and goods, well furnished with sails, oars, setting-poles or other necessary implements, and men prudent, skillful, able-bodied, sufficient and competent for such business and service.

Sect. 3. If any keeper of the said ferry shall at any time carry or attempt to carry over the said river any person, horse, cattle, carriage or goods in any boat, wherry or other vessel, that is not good and sufficient according to the provisions of this Act, or shall overlade his boat, wherry or other vessel, so that the passengers or goods be thereby endangered, such keeper of the said ferry shall for every such offence forfeit and pay ten dollars to be recovered, as herein after mentioned, and shall also be liable to an action for damages at the suit of the party aggrieved.

Sect. 4. Every keeper of the said ferry, who shall not provide good and sufficient boats, wherries or other vessels suited to such ferry, with good and sufficient sails, oars setting poles or other necessary implements aforesaid, and such number of men qualified according to this Act to attend the boats as the condition of the passage may require for the safe and speedy transportation of passengers, horses, cattle, carriages and goods over the said river, shall for every default therein forfeit and pay five dollars to be recovered as hereinafter mentioned.

Sect. 5. Every keeper of the said ferry shall give constant and diligent attendance at the same, and shall not deny or unnecessarily delay the carrying over of any passenger, horses, cattle, carriages or goods, under the penalty of five dollars to be recovered as hereinafter mentioned; and such keeper of the said ferry shall for any default herein be also liable to an action for damages at the suit of the party aggrieved by such denial or delay. *Provided always;* that the person keeping the said ferry shall not be obliged to put off from his wharf and pass the said river, when it manifestly appears to be hazardous or dangerous for him so to do, on account of any storm, tempest or ice.

Sect. 6. All persons and goods shall be received into the ferry boats and carried over the said river, according to their arrival at or first coming to the said ferry; and every keeper of the said ferry acting contrary to this rule shall for every violation thereof for-

8 Proviso

4 Wharf, &c.,  
in good order5 Bad boats—  
penalty, &c

[16]

6 Not keeping  
good boats—  
penalty

[16]

7 Delaying  
passengers &c  
penalty  
(16)

8 proviso

9 Priority

feit and pay three dollars to be recovered as hereinafter mentioned.

10 Disorderly  
conduct

(16)

Sect. 7. The keeper of the said ferry shall have authority to keep or put out of his ferry boat any person, who shall attempt or press to enter or stay therein, contrary to his order, when the said boat shall be laden or occupied by other persons or goods having a prior right of passage according to the sixth section of this Act; and every person so doing contrary to his order, shall for every such offence forfeit and pay one dollar to be recovered as herein after mentioned.

11 Rates of  
ferriage

Sect. 8. The keeper of the said ferry shall have, take and receive, for ferriage over the same, the rates and prices following, to wit; for every

Single man,	- - - - -	sixty cents.
Two or three persons, each	- - - - -	fifty cents.
Or more persons	- - - - -	thirty-three cts.
A man and horse	- - - - -	one dollar and twenty-five cents.
A horse and chair	- - - - -	one dollar and fifty cents.
A wagon, pair of horses and passengers,	- - - - -	two dollars and fifty cents.

A coachee with pair of horses and passengers, three dollars.

Ditto with four horses and ditto, three dollars and fifty cents.

One or more horned cattle, each, - - - fifty cents.

A cart with yoke of oxen or two horses, - - - two dollars.

And for all and every kind of merchandise at the rate of thirty-three cents for every hundred weight so carried or ferried across said river, and no more.

12 Table of  
rates set up  
at ferry

Sect. 9. Every keeper of the said ferry shall set up and constantly keep in public view at the said ferry house a table of the rates aforesaid fairly written, printed or painted in large letters, so that the same shall be open and visible for the inspection of passengers, under the penalty of one dollar for every day that he shall neglect so to do. And if any-keeper of the said ferry, or his servant shall take a greater sum for ferriage than the rates allowed by this Act, he shall for every such offence forfeit and pay three dollars to be recovered as herein after mentioned.

13 penalty for  
extortion  
[16]

14 Penalty  
on other persons  
carrying  
passengers &c

Sect. 10. It shall not be lawful for any person, except the keeper of the said ferry, to take or carry over the river Delaware from the aforesaid wharf, or from any place on the shore of the said river within one mile of the said wharf any person or persons, who reside out of the town of New-Castle aforesaid, under the penalty of five dollars for every person so carried over contrary to the provision of this section to be recovered as herein after mentioned; *Provided*, that nothing in this Act shall be construed, so as to prevent any person or persons, who may come from the State of New-Jersey to the town of New-Castle, from returning in the boat or boats in which they came; or if such persons have come to the town aforesaid for the purposes of trade or traffic, they shall not be prevented from returning in the boats, in which they came, or in any other boats, at their election; nor shall the inhabitants of the said town be prevented from crossing the said river in such boats as they may choose; and further nothing in this Act shall be construed to prohibit any commercial intercourse between the State of

15 proviso

(16)

New-Jersey and the town of New-Castle, but that the same may be continued as heretofore without interruption.

Sect. 11. The several fines and penalties in this Act mentioned shall and may be sued for and recovered before any Justice of the Peace in any of the counties of this State in the same manner, as debts under forty shillings may be sued for and recovered by the laws of this State, together with costs of suit, by any person who will sue for the same. 16 Suits for penalties

Sect. 13. The said James M'Calmont, his heirs or assigns shall within one year after the passing of this Act, procure from the Secretary of this State, a copy of this Act of Assembly duly certified under his hand and the seal of the State, and shall cause the said copy so authenticated, to be recorded in the office for recording of deeds in the county of New-Castle; and a copy thereof certified by the Recorder of deeds, under his hand and the seal of office shall be evidence in all cases whatsoever. 17 recorded

*Passed at Dover, January 21, 1803.*

A SUPPLEMENT to the Act, entitled, "*An Act for establishing and regulating a ferry over the river Delaware, at the town of New-Castle.*" 1811

Section 1. The term of time prescribed and limited by the herein before recited Act for the exercise and enjoyment of the exclusive ferry-right, at the said ferry in the town of New-Castle aforesaid, as secured by the said Act, shall be and is hereby extended and enlarged for and to the extent and full end and term of thirty-one years from and after the said twenty-fifth day of March, eighteen hundred and one, to be exercised and enjoyed in full right by the said James M'Calmont and such other person or persons, as may be owner or owners, possessor or possessors from time to time of the said brick house, wharf and landing-place herein before recited and mentioned, any thing in the said herein before recited Act contained to the contrary notwithstanding. 18 Ferry-right extended (19)

Section 2. *Provided always*, That the said James M'Calmont or such other person or persons as may be the owner or owners of the said premises shall add to and extend the slip of its present breadth sixty feet beyond the end thereof into the river Delaware, within the period of the present year, and shall from time to time afterwards and during so much of the said term of thirty-one years as shall then be unexpired and to come, continue and increase that extension of the said slip further into the said river, as the alluvion thereof and the accumulation of the mudflat there may render necessary; so always that ferry-boats may at all times of the tide in the said river depart from or approach to the said slip, with passengers, horses, cattle, carriages and goods, to pass and repass with safety and convenience. 19 Conditionally

Sect. 3. All the provisions, clauses and sections of the said recited Act, except so much or such part thereof as are hereby altered or amended, shall be and continue and are hereby declared to be and continue in full force for and during, and unto the full end and term of the aforesaid period of thirty-one years. (L)

*Passed at Dover, January 29, 1811.*

## II.

1808 AN ACT to establish and regulate a ferry over Nanticoke river, at the village of Seaford, in Sussex county.

Whereas public convenience and the better accommodation of individuals require that a ferry should be established under due and proper regulations over Nanticoke river, at the village of Seaford :—

20 Proprietors  
[25]

Section 1. Richard Lawrence, John Rust senior and John Hooper esquire be, and they are hereby appointed proprietors, for the purpose herein after mentioned ; and they are hereby authorized and empowered, after the passing of this Act, to make a good and sufficient road from the head of Market-street and down said street to Nanticoke river, with good and sufficient landings on both sides of said river, at the places now laid out by an order of court, in the following manner, one on Market-street, and the other opposite to Market-street, and a good and sufficient causeway to fast land ; the aforesaid road, landing places and causeway shall be made good and substantial, suitable for footmen, horses and carriages to pass and re-pass, also find a good and sufficient boat or boats, and man or men, to be kept for the use of said ferry.

21 Penalty  
for using ferry  
without li-  
cense

Sect. 2. As soon as the said road, causeways and landing-places shall be erected and in sufficient order and the said ferry-boats shall be provided, then the aforesaid Richard Lawrence, John Rust senior and John Hooper, their heirs and assigns shall have the sole and exclusive right of ferrying over the said river Nanticoke, in Sussex county, at the village of Seaford aforesaid, and no person or persons shall have power or authority to use in any manner whatsoever, the said ferry, unless by license first obtained from the said proprietors or their successors, under the penalty of twelve dollars lawful money of the State of Delaware for each and every offence, to be recovered of the person or persons so offending in using the said ferry or boat thereunto belonging, their executors and administrators, in manner and form as other debts of the like sum are made recoverable before any Justice of the Peace for the county of Sussex ; one third part to go to the informer, and the residue to the said proprietors, their heirs or successors, as the case may be.

22 Ferry to  
be kept in  
good order

Sect. 3. The aforesaid proprietors, their heirs and assigns shall be obliged to keep the said ferry, road, causeways and landing-places in good and sufficient repair, and give all due attendance to every person wanting to pass or cross the same, and in default thereof or for taking more than the fees or rates herein after mentioned, shall forfeit and pay the sum of twelve dollars for every offence, one half to go to the party grieved, and the residue to the Treasurer of the county, for the use of the county, to be recovered before any Justice of the Peace in Sussex county, as other debts of the like sum are recovered.

23 penalty for  
neglect & for  
extortion

24 Rates of  
ferriage

Sect. 4. Any person or persons, who shall keep the said ferry, shall have, take and receive for ferriage over the same, the rates and prices following, to wit: for every foot-passenger, six cents ; for every single man and horse, twelve and one half cents ; for every led horse, ox or cow, six cents ; for a chair or sulky, horse

and rider, twenty-five cents; for a coach or other four wheel carriage and pair of horses, sixty cents; for a cart, one horse and driver, laden, thirty-three cents, unladen, twenty-five cents; for a wagon, two horses and driver, laden, sixty-seven cents, unladen, fifty cents; for every other horse in a cart, wagon or other carriage, six cents.

Sect. 5. The right hereby vested in the proprietors, shall and may be transferable to any person or persons, under the regulations before mentioned. 25 Ferry transferable

*Passed at Dover, January 27, 1808.*

## —o— FREDERICA.

AN ACT directing the manner of choosing commissioners to regulate and repair the streets and alleys in the town of Frederica, and for other purposes.

1826

Sect. 1. It shall and may be lawful for the white inhabitants of said village living within the limits herein after described, who may be taxables in said town or who are entitled to vote at the General Election, to assemble at any convenient place in said town on the first Monday in March next between the hours of two and six o'clock in the afternoon, and on the same day annually in future, and then and there choose by ballot five commissioners, one assessor and one treasurer, who shall continue in office one year, or until others are duly elected.

1 Commissioners assessor and treasurer

Sect. 2. [By this section the said commissioners or any three of them are authorized to cause all the streets and alleys in said village to be surveyed and laid out by a skillful surveyor—who shall under their direction make a map containing the boundaries of the village, the courses width and names of the streets and alleys—and said map signed by the commissioners or a majority of them and by the surveyor shall be deposited and recorded in the Recorder's office in Kent county.]

2 Survey of streets & map

Sect. 3. The said commissioners shall cause to be fixed large stones in the earth (so that no part thereof appear above the surface) in the center or middle of the streets respectively, where they intersect each other; which stones so set and affixed in the earth in the middle of the streets as aforesaid, as well as such other stones as shall from time to time hereafter be so set or affixed in the earth by the commissioners for the time being, shall in all cases and in all courts of law within this State be deemed, taken and allowed as land marks.

3 Stones for marks of streets

Sect. 4. The said commissioners for the time being shall have full power and authority to cause the said streets and alleys 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 village, and shall cause a fund to be raised by way of tax upon the persons and estates within the said village, to discharge the expense of surveying, laying out, repairing and supporting the said streets and alleys, and making and recording a

4 Streets regulated, repaired, &c.

5 Tax



plot thereof, for setting up and fixing land marks, and for erecting public pumps in the streets of the said town, and making a rate or assessment on the persons and estates within said town; *Provided always*, that the said commissioners shall not be compelled to support or repair the streets in said village, now deemed public highways and supported by the county of Kent.

6 Nuisances  
removed, &c.

Sect. 5. The said commissioners are hereby required, directed and enjoined to cause all nuisances to be removed from the said streets and alleys; and in case any person or persons, who shall occasion such nuisance, shall neglect or refuse to remove the same as soon as conveniently may be after being requested so to do by any two of the said commissioners, he, she or they so refusing or neglecting to remove the nuisance as aforesaid shall forfeit and pay to the Treasurer, for the use of the village, one dollar to be recovered as debts under forty shillings are recoverable.

7 Assessor

his oath

& duties

Sect. 6. The assessor to be chosen as aforesaid shall be duly qualified by oath or affirmation to perform the duties of his office to the best of his knowledge and without favor or partiality, and in two weeks after the first Monday in March annually shall make a true and impartial assessment on all the persons and estates within the said town, for the purpose of raising a general fund for repairing the streets and other purposes; and the said assessor shall, forthwith after making the assessment cause a duplicate thereof to be set up in the most public part of the said town, notice whereof he shall give by at least two advertisements; and if any person or persons shall conceive themselves aggrieved or overrated by the said assessor, they may within twenty days after said duplicates are put up appeal to the commissioners, who shall hold a meeting in said village for that purpose, whose decision thereupon shall be final.

8 appeal

9 Treasurer—

his duties

and powers  
(Levy Court  
43)

10 bond, &c.

11 settle with  
commiss'rs

12 compens'n

13 Limits of  
the town

Sect. 7. After the expiration of the said twenty days, the treasurer for the time being shall proceed to collect the taxes, as they have been levied by said assessor and corrected by the commissioners in cases of appeals; and the said treasurer shall have the same power and authority to collect said taxes, as are given to the collectors of county rates and levies; and the said treasurer, before he enters on the duties of his office, shall 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 any three of them, and shall settle his account annually in the month of February with said commissioners, or as often as a majority of them shall call on him for that purpose; and said treasurer and assessor shall receive a reasonable compensation for their trouble in the premises to be determined by the said commissioners.

Sect. 8. The following shall be deemed and taken and considered as the bounds and limits of the said village of Frederica,—Beginning at the forks of Murderkill and Spring creeks, and running up Spring creek to the division line of the heirs of Matthew Lowber and Thomas Lowber, thence with said division line to a corner stone formerly a corner of David Leach and Peter Lowber's land, thence with a line dividing the lands of said Leach now Vin-

cent Moore and the heirs of Thomas Lowber to the line of Joseph G. Rowland, and with said line to the end thereof continuing said course to Murderkill creek, and down said creek to the forks of Spring creek and place of beginning.

*Passed at Dover, February 9, 1826.*

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## GEORGETOWN.

AN ACT for removing the seat of justice from Lewes to a more central part of Sussex county, and for other purposes. 1791

Whereas it appears to this General Assembly, That a great majority of the inhabitants of Sussex county by petition have prayed a removal of the seat of justice from Lewes to a more central and convenient part of said county; and this Assembly conceiving the prayer of said petitions should be granted:—

Sect. 1. [By this section George Mitchell, Robert Houston, William Moore, John Collins, Nathaniel Young, William Peery, Rhoads Shankland, Woodman Stockley, Daniel Polk and Thomas Batson are appointed commissioners, with authority to them or a majority of them to purchase in fee, for the use of Sussex county not exceeding one hundred acres of land near the center of Sussex county, at a place called *James Pettijohn's Old field*, or within two miles of the house of Ebenezer Pettijohn, in Broadkill hundred, for the purpose of building thereon a Court House and prison, for said county, and to cause said land to be surveyed by the Surveyor of the county, and a certificate to be delivered to the Recorder of the county, who shall record the same.]

1 Purchase of land for Court House & Prison—Sussex

Sect. 2. [By this section Robert Houston, Rhoads Shankland, George Mitchell, William Moore and John Collins or any three of them are authorized with the assistance of the Surveyor of said county to cause the land purchased as aforesaid to be laid out in lots and to sell the same to the best advantage, and execute deeds thereof; reserving to the use of Sussex county half an acre of ground each, for erecting said Court House and prison on respectively and their respective accommodations, and appropriate the money toward the discharge of the expenses occasioned by the purchase and finishing of the buildings.]

2 certificate recorded

3 Sale of part (6)

Sect. 3. The Court House and prison so to be built as aforesaid, shall be at least of the same size and dimensions with the old Court House and prison now at Lewes, the Court House to be built of wood, and the prison of brick or stone; and when the said Court House and prison are so far finished, that courts can conveniently be held in said Court House, and prisoners safe kept in said prison, then the said commissioners, or a majority of them shall have power and authority to sell, by way of public sale or otherwise to the best advantage, the old Court House and prison in Lewes and appropriate the monies arising from such sale towards the finishing of said buildings; and shall give good and sufficient deed or deeds in fee simple to the purchaser or purchasers of the same.

4 Sale of old Court House & Prison in Sussex

Sect. 4. After such sale is made of the old Court House and

5 Courts held there  
[Public Offices 1] prison, all the courts of Sussex county shall be held in such new Court House, according to the usage and practice of other courts in this State; and such new Court House and prison shall then be used, taken, held and deemed, to be the proper Court House and prison of Sussex county.

*Passed January 29, 1791.*

1801

### AN ADDITIONAL SUPPLEMENT to said Act

6 Commissioners to fill vacancies [3] Section 1.—[By this section Benton Harris, Doctor James Robertson and William Russel are appointed commissioners in place of Robert Houston, William Moore and George Mitchell Esquires deceased; and the surviving commissioners and the commissioners hereby nominated and their successors or a majority of them are authorized to sell all the lots remaining unsold, and execute deeds for lots that had been sold pursuant to the Act aforesaid.]

7 Future vacancies Sect. 2. When vacancies shall hereafter happen by the death, resignation, removal or inability to serve of any of the said commissioners, it shall and may be lawful for the Levy Court for the county of Sussex to nominate and appoint a suitable person or persons, to serve as commissioners for the purpose aforesaid.

8 Alleys vacated Sect. 3. The following alleys and lanes in Georgetown, to wit, South Alley, from Market-street to Laurel-street, South Lane, from Market-street to Laurel-street, Cooper's Alley, from Front-street as far as the town land extends, Cherry Lane, from Market to Cooper's Alley, Cooper's Alley, from Acre lot number one to the south side of lot number two hundred and thirty-three and two hundred and thirty-six, Strawberry Alley, from Bedford-street north one hundred and twenty feet to the line that divides lots number forty-one and forty-four, are deemed and are hereby held to be stopped up and done away; and the said alleys and lanes stopped up and done away as aforesaid shall be divided equally between the adjoining lot and land holders.

*Passed at Dover, January 23, 1801.*

—o—

## LAUREL.

1827

### AN ACT for establishing the boundaries of the town of Laurel, and for other purposes therein mentioned.

1 Commissioners Section 1. [By this section Kendal M. Lewis, John Tennant, William W. Green, Philip Matthews and Henry Bacon are appointed commissioners with authority to them or any three of them, taking a skilful surveyor, to make a survey of the town of Laurel, and ascertain and fix the boundaries thereof and lay out, open and regulate the streets, lanes and alleys: the surveyor under the superintendence of the commissioners to make a map of the said survey, containing the boundaries of the town and courses, width and names of the streets, lanes and alleys—and the said map signed by

2 Survey & map

the surveyor and commissioners to be lodged in the office for recording of deeds in Sussex county and there recorded—and the said map or the record thereof is made sufficient evidence.]

Sect. 2. The said commissioners shall fix stones six inches below the surface in the earth, in the center 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 to 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.

3 Stones to mark streets

4 penalty for removing

Sect. 4. 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*, 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.

5 Election of commiss'rs

6 their style

7 pavements, gutters and party walls

Sect. 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;—when such houses or buildings as aforesaid shall fall down by reason of decay or otherwise be destroyed, then and in such case, if the owner or owners of any such

8 Penalty for laying foundation &c in certain cases, without direction

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.

9 Removal of  
walls or build-  
ings  
  
proviso  
  
Sect. 6. 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.

10 Compens-  
ation  
  
Sect. 7. 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.

11 Partition  
fences  
  
Sect. 8. 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 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 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, 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  
  
12 Encroach-  
ment on str.  
  
Sect. 9. 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 inclosures 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

13 penalty for  
not removing  
nuisances

being duly convicted thereof in any court of General Quarter Sessions of the Peace and Gaol Delivery, shall be fined in any sum not exceeding fifty dollars, to be paid to the use of the State.

Sect. 10. 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 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 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. 14 Taxes  
proviso

Sect. 11. 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. 15 Notice of  
assessment  
  
16 treasurer's  
powers  
(Levy Ct. 43)

Sect. 12. 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. 17 accounts of  
commiss'rs  
  
18 Treasurer's  
settlements  
19 compensa-  
tion

Sect. 13. 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. 20 Oath of  
commiss'rs

Sect. 14. 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 com- 21 Treasurer  
appointed

his bond

missioners 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.*

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## LEWES.

1818

**AN ACT** *to improve the navigation of Lewes creek, to survey and regulate the streets of the town of Lewes, and for other purposes.*

1 Survey &  
map of Lewes

**Section 1.** [By this section Samuel Paynter, James F. Baylis, Benjamin Prettyman, David Hazzard and Peter F. Wright are appointed commissioners with authority to them or a majority of them to take to their assistance a skilful surveyor and after having caused to be ascertained and established the boundaries of said town and caused to be surveyed and laid out all the streets, lanes and alleys in said town and such additional streets, lanes and alleys as they shall deem proper, to cause to be fixed stones in such places as they shall deem proper for establishing the lines and boundaries of the streets, lanes and alleys, and to cause the surveyor to make an accurate map of said town, on which shall be designated the boundaries thereof, and the courses, width and names of the streets, lanes and alleys, which map they together with the surveyor shall sign, and cause it to be recorded in the office for recording of deeds in Sussex county; and the said record or a duly certified copy thereof is made sufficient evidence.]

(23)

2 recorded

3 Trustees,  
treasurer &  
assessor elected

**Sect. 2.** It shall and may be lawful for every free white male person of twenty-one years of age and upwards resident within the limits of the said town and possessing a freehold therein of a lot with a dwelling-house thereon or a lot not less than sixty feet by two hundred feet without a house thereon to attend on the first Monday in June next, and on the first Monday in June annually, between the hours of two o'clock and six o'clock in the afternoon, at such place within the said town as may be appointed by the said commissioners, and then and there elect by ballot five persons having the same qualifications as the electors aforesaid, to be trustees of the town of Lewes, and shall also elect one other person to be treasurer, and one other person to be assessor for said town, both qualified as aforesaid; which persons so elected shall continue in office one year, and from thence until others are duly elected and qualified to supply their places respectively; and every election for trustees, assessor and treasurer as aforesaid shall be held

4 term of  
office

conducted and carried on under the superintendence and management of three substantial freeholders to be appointed for that purpose by the trustees of the town of Lewes for the time being : and immediately after each election, as soon as it is ascertained who are appointed trustees of the town of Lewes, assessor and treasurer as aforesaid, the persons, under whose superintendence and management such election is carried on, shall enter in a book to be provided for that purpose, a memorandum or minute of such election containing the names of the persons respectively elected, and shall give to the trustees, treasurer and assessor so chosen as aforesaid certificates of their election : and the book containing such minutes shall be carefully preserved by the trustees of the town of Lewes, and shall be admitted as competent evidence in all courts of law and equity within this State.

5 Judges of election

6 their duties

Sect. 3. The trustees of the town of Lewes appointed or elected according to the provisions of the preceding sections shall be called and known by the name of *Trustees of the town of Lewes*, and by that name shall have perpetual succession and a common seal, and shall and may be able and capable in law to sue and be sued, plead and be impleaded, in any court of law or equity or any other place whatsoever, and to do and execute all other matters and things which bodies politic and corporate may lawfully do.

7 Trustees

their style &amp; corporate powers

Sect. 4. It shall be the duty of the trustees of the town of Lewes, and they are hereby invested with full and ample powers therefor, to cause all the streets, lanes and alleys and other public lands, within the said town to be opened and repaired, as they may judge necessary, except where buildings are erected thereon, and in that case to levy a ground rent, which shall not exceed one fourth part of the sum that the buildings and ground so occupied would usually rent for, which said rents together with such voluntary donations as can be obtained shall be exclusively appropriated towards cleaning out and deepening the channel of Lewes creek and in such works as may be useful to prevent injury and obstructions to the said channel by the drifting of sand therein from the cape.

8 Streets opened

9 buildings on street—ground rent

10 Lewes creek

Sect. 5. The trustees of the town of Lewes shall be and they are hereby authorized and required to cause all obstructions and nuisances, that may be at any time in any of the streets, lanes and alleys of the said town to be removed or abated ; and in case any person or persons, who shall occasion such obstruction or nuisance, shall neglect or refuse to remove the same within three days after being required so to do in writing by any three of the trustees of the town of Lewes, he, she or they so refusing or neglecting to remove such obstruction or nuisance as aforesaid shall forfeit and pay to the treasurer of the said town, for the use of said town, the sum of five dollars, to be recovered in the name of the treasurer of the town of Lewes as debts under forty shillings are now recoverable by the laws of this State ; and the trustees of the town of Lewes may moreover cause such obstructions or nuisances to be removed or abated as aforesaid.

11 Nuisances removed

Sect. 6. Not less than three trustees shall form a quorum to do business ; and in case of being reduced to a less number, elections may be held in the manner herein before directed to fill vacancies, until the stated annual election. Each of the trustees of the town

12 Trustees—quorum

vacancies

13 Trustee,



conservator  
of the Peace

11 oath of  
Trustees

15 Assessor

16 appeal

17 his property  
assessed

18 his oath

19 Tax

of Lewes during his continuance in office shall be a conservator of the peace within the limits of the said town, with full power and authority to do all things for the preservation of the peace that any other conservator of the peace may or can do by the laws of this State. And each of the said trustees, before he enters upon the duties of his office as such, shall take an oath or affirmation faithfully and impartially to discharge the duties of his office as trustee of the town of Lewes to the best of his skill and judgment; which oath or affirmation shall be administered by any Judge or Justice of the Peace of this State, and a certificate of the same shall be made by the person administering the same in the record book of the election of such trustees.

Sect. 7. The assessor of the town of Lewes for the time being shall annually during the month of June make a true, just and impartial valuation and assessment of all the real estate within the said town; and the said assessor shall forthwith after making such assessment deliver to the trustees of the town of Lewes a duplicate thereof containing the names of all persons being owners of real estate within the said town and the amount of the assessment or valuation of the real estate of each person respectively within the said town: which duplicate in the hands of the trustees shall be and remain open and free for the inspection of all persons concerned: and if any person or persons shall conceive him, her or themselves aggrieved or overrated by the said assessor, it shall and may be lawful for him, her or them at any time before the twentieth day of July after making such assessment to appeal to the trustees of the town of Lewes, who shall assemble for the purpose of hearing such appeals and whose decision thereon shall be final and conclusive: and in case one of the trustees appeals, he shall not sit in judgment on his own appeal, but it shall be decided by the others: and the trustees aforesaid shall assess and value the real estate of said assessor within said town, and add such valuation and assessment to the said duplicate: and after the said assessment and valuation shall be examined and adjusted as aforesaid by the trustees of the town of Lewes, all taxes shall be assessed, levied and raised on the property thus valued, in just and equal proportions and rates: and the said assessor immediately after his election and before entering on the duties of his office shall take an oath or affirmation, diligently, faithfully and impartially to perform the duties of his office to the best of his ability, knowledge and judgment; which oath or affirmation shall be administered by any Judge or Justice of the Peace of this State, and a certificate thereof shall be made by the person administering the same in the record book of the election of the trustees, treasurer and assessor aforesaid.

Sect. 8. The trustees of the town of Lewes shall have power and authority to levy a tax, which in no case shall exceed the sum of three hundred dollars in any one year; and when the assessment is adjusted as aforesaid, and they have ascertained the sum necessary to be raised on the said town for the purposes of this Act, and having apportioned the same on the assessment and valuation aforesaid, they shall as soon after as convenient furnish the treasurer of said town with a list containing the names of every

person owning real estate within the said town, and opposite to each name respectively the amount of the real estate of such person within the said town, and the tax to be levied on such assessment for each person as aforesaid; which list shall be signed by the trustees of the town of Lewes and shall contain a note or minute of the whole tax laid for the year being, and the rate per hundred dollars necessary to raise that tax; and the treasurer of the said town immediately after receiving the said list shall proceed to collect the taxes mentioned in the said list, and shall have the same power and authority to collect the said taxes, as are given by law to the collectors of county rates and levies. And the said treasurer, before he enters on the duties of his office, shall give bond with sufficient surety in the penalty of one thousand dollars lawful money of the United States to the trustees of the town of Lewes, conditioned for the faithful discharge of the trust reposed in him and the payment over to his successor in office of all such sums of money as may remain in his hands upon the settlement of his accounts. And the said treasurer shall pay all orders drawn on him by the said trustees of the town of Lewes or any three of them, and shall settle his accounts with the said trustees annually at such time, as they shall require. And the said treasurer and assessor shall each receive for the performance of the duties enjoined on them by this Act a reasonable compensation to be determined by the said trustees.

20 powers of  
Treasurer  
[Levy Ct. 43]

21 payments  
& settlement

22 compensa-  
tion of Treas-  
urer & assessor

Sect. 9. The said town of Lewes shall begin at the north corner of Robert West's land where it intersects the line of William Russel's land on the road or street leading to Pilot-town, thence running in a south west direction parallel with Ship-carpenter's street to Canary creek or branch, thence up Canary creek to a place two hundred feet higher up said branch than South street, thence in a north east direction parallel with South street keeping two hundred feet distance to a place where a north west course from the intersection of the road leading from Lewes to Rehoboth with the road leading to William Wolfe's will intersect with this line, thence north west across the Rehoboth road aforesaid and two hundred feet up the road leading to William Wolfe's, thence in a north east direction keeping two hundred feet distance from said Rehoboth road until it intersects with a line drawn parallel with South street and one quarter of a mile south easterly of the same, thence with said line north easterly across Lewes creek to the edge of the cape, thence along the edge of the cape until it intersects a north east line from the first boulder, thence running across Lewes creek south westerly home to the place of beginning.

23 Limits of  
Lewes

Sect. 10. The trustees of the town of Lewes are hereby authorized to contract with the commissioners of Lewes bridge and others, to whom any sum or sums of money are due, as arrearages, and to pay and satisfy them respectively, and whenever such payment and satisfaction shall be made, the said trustees shall immediately thereafter be invested with all the power and privileges at present granted by law to the commissioners of Lewes bridge.

24 Trustees  
may con-  
tract for Lew  
es bridge  
page 569

25 Injury to  
works to pre-  
vent sand  
drifting into  
Lewes creek

Sect. 11. The trustees of the town of Lewes shall have the same powers to prevent and punish depredations on any works that may be made to prevent sand from drifting into Lewes creek as are granted by this Act in case of nuisances in any of the streets lanes or alleys of the said town: *Provided always*, that the said trustees of the town of Lewes shall not be compelled to support, repair or amend the streets in the said town, now deemed public highways and supported by the county of Sussex, except only so far as they may consider it to be for the particular convenience and accommodation of the inhabitants of the said town.

26 No com-  
pensation to  
Trustees

Sect. 12. The said trustees of the town of Lewes shall not take or receive any compensation for their services under this Act under any pretence whatsoever. And any person or persons, conceiving him, her or themselves aggrieved by any thing unlawfully done by any of the persons or officers herein invested with powers in the execution of this Act, such person or persons so aggrieved shall have the same remedy as is given by law in similar cases against the public officers of the State or counties respectively.

27 Remedy  
for persons  
aggrieved, &c.

*Passed at Dover, February 2nd, 1818.*

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## MILFORD.

1829

**AN ACT** directing the manner of choosing commissioners to regulate and repair the streets of Milford and for other purposes.

1 Town offi-  
cers elected

Section 1. 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 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.

2 term

3 their powers

Sect. 2. 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*, that the said commissioners, in case no tax shall be assessed and levied for the purposes hereinbefore mentioned, shall not be compelled to support or repair the streets in said town, now deem-

4 tax

ed public highways, and subject to be supported by the county of Kent.

Sect. 3. The said commissioners, assessor, inspector of accounts, treasurer and constable shall before one of the Justices of the Peace in the 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 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 hereinbefore mentioned; and the said assessor shall forthwith after making the assessment cause a duplicate thereof to be put up in the most public places 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 day 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.

5 Official  
oaths

6 duty of as-  
sessor

Sect. 4. 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 indorse upon the bill, order or draft, *allowed*, together with the day of the month and year of the said indorsement and sign his name thereto; and the said bill, order or draft thus indorsed shall be forthwith paid by the treasurer, out of the funds of said town in his hands.

7 Inspector of  
accounts

Sect. 5. 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.

8 Treasurer

9 his powers  
(1. evy Ct 13)

10 bond

11 Constable,  
powers  
(Swine, &c.  
22) pa 516

tees

12 Pound

13 swine im-  
pounded

and sold

14 Place of  
confinement

Sect. 6. 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 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.

Sect. 7. 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 the proceeds of such sale shall be paid by said constable to the treasurer of the said town and by him 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.

Sect. 8. 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 is 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.

Sect. 9. 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. 15 Nuisances

Sect. 10. 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. 16 Poultry.  
shot

Sect. 11. 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. 17 Assessor,  
&c. to provide  
place of elec-  
tion

Sect. 12. 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 superintendence 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 de- 18 notice  
19 Bounda-  
ries

ceased, 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.

*Passed February 14, 1829.*

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## MILTON.

1819

### AN ACT to survey, lay out and regulate the streets of the village of Milton.

1 Bounds

Section 1.—[By this section John Robinson, Watson Pepper, and John Parker senior or the survivors or a majority of them are authorized to ascertain and establish the bounds of the village aforesaid and to cause all the streets, lanes and alleys of said village and additional streets, lanes and alleys, as they may deem proper, to be surveyed, laid out and opened, and by section 2 are further authorized to take to their assistance a skilful surveyor and to cause to be fixed stones for marking the lines, bounds, corners, streets, lanes and alleys—and to cause the surveyor to make an accurate map of said village, on which shall be designated the boundaries of said village and the courses, width and names of the streets, lanes and alleys; and they may add to said map such additional lines, surveys, observations and explanatory notes, as they may deem proper; and they together with the surveyor shall sign the same, and cause it to be recorded in the office for recording deeds in Sussex county; which record or a copy duly certified shall be sufficient evidence.]

2 Oath

[Sect. 3. This section provides, that the commissioners and surveyor, before entering upon their duties, shall be sworn or affirmed before some Judge or Justice of the Peace of this State faithfully and impartially to perform the duties assigned them by this Act, according to the best of their skill and judgment.]

*Passed at Dover, 28 January, 1819.*

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## MISPILLION NAVIGATION COMPANY.

1827

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

1 Corporate name

[By section 3, the company is incorporated by the name of *The Mispillion Navigation Company*; and it is provided, that the directors (among other powers) shall have power] "to make or cut such canal or canals for the improvement of 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 for the improvement of said Mispillion creek."

Sect. 8. It shall be the duty of the directors aforesaid and they are hereby authorized 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. <sup>2 Director's duty</sup>

Sect. 9. 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. <sup>3 Penalty</sup>

Sect. 10. 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 <sup>4 Toll</sup> 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 the 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. <sup>5 how collected</sup>

Sect. 11. 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, 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 <sup>6 Rate of toll</sup> <sup>7 penalty for neglect to pay</sup>



some skilful person to measure the burden 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.

*Passed at Dover, February 1, 1827.*

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## MURDERKILL & SPRING CREEKS.

1810 AN ACT for improving the navigation of Murderkill creek and Spring creek in Kent county.

1 Commiss'rs [By section 1, Walter Douglass, M'Kimmev Smack, Moses Sipple, Michael Hall Bonwell and Andrew Barratt are appointed commissioners to cut canals, &c. By section 3, the Governor is authorized, in case any of the commissioners should die, remove from the county, be incapable or refuse to serve, to appoint others in their stead.]

2 Obstructing  
canal, &c.  
penalty Section 4. If any person or persons shall fill up or designedly or intentionally injure or obstruct any canal already cut between the waters of the said creeks or either of them, or shall injure or obstruct the navigation of the said creeks or either of them, or of any canal already cut or hereafter to be cut between the waters of the said creeks or either of them, by wears, hedges or in any other manner whatsoever, he, she or they so offending shall severally forfeit and pay any sum not exceeding one hundred dollars, one moiety thereof to the use of the State and the other moiety thereof to the use of him or her, who will sue for the same in any court of record in this State by action of case, debt, bill, plaint or information.

3 Drawbridge Sect. 6. The said commissioners or any two of them be, and they hereby are authorized, empowered and required to build and erect, or to cause to be built or erected, a drawbridge across Spring creek aforesaid, where the State road leading from Dover to Frederica crosses the said creek, and where the old bridge now stands.

4 Clear space  
& draw Sect. 7. There shall be left clear in the place between the abutments, wings and other works erected for the use, support and preservation of said bridge the space of nineteen feet at least at all times, for the waters of the said creek to pass through, over which shall be erected and placed a draw or platform of the breadth of eighteen feet at least, so constructed as to roll off or be raised up for the accommodation of all such persons, as may have occasion to pass with any vessel through the said bridge, who are hereby obliged to roll off and on or raise and lower (as the case may be) the said draw or platform, so that the same receive no damage thereby, under the penalty of fifty dollars for every neglect therein, to be recovered with costs in the name of the State of Delaware in the Court of General Quarter Sessions of the Peace and Gaol Delivery in and for Kent county.

5 penalty for  
injuring

6 Supported  
by county

Sect. 9. The Levy Court of Kent county aforesaid shall, after the said bridge shall be erected and built as aforesaid, cause the said bridge to be supported, maintained and repaired from time to

time (always keeping up a draw or platform as aforesaid) in like manner, as other bridges are supported, maintained and repaired in said county: and the said draw-bridge shall be deemed and taken to be a common highway.

*Passed at Dover, January 22, 1810.*

—o—  
NEWARK.

AN ACT for establishing the market in the town of Newark, and for regulating the same.

1772

Sect. 12. And for preventing all uncertainty and disputes that may arise touching or concerning the limits of the said town of Newark;—The lines and bounds herein after mentioned are and always hereafter shall be reputed, deemed, allowed and taken to be the boundaries and limits thereof; *That is to say*, Beginning at the junction of the public roads near an inn now known by the name of the sign of Saint Patrick, and extending thence along the road leading to New-London township in Chester county to a small stream or run, and by the same stream or run to the mouth thereof, where it empties into Whiteclay-creek, and from thence down the said creek to the most easterly line of the land now of Doctor Samuel Platt, and by the lines of the said Samuel Platt and of land now of James Simpson, to include the said lands within the said town, to the land now of David M'Mechen, and from the corner of the said James Simpson and David M'Mechen their land to the end of James Anderson's lane, and thence by a right line to the place of beginning.

Boundaries of  
the town

*Passed June 13, 1772.*

—o—  
NEW-CASTLE.

I.

AN ACT for erecting a pound in the town of New-Castle.

12 Geo. II.

Whereas many of the inhabitants of the hundred of New-Castle have received great injury and damage by unruly horses and cattle breaking into their fields and inclosures; for remedy whereof—

Section 1. A pound shall be erected in the town of New-Castle in the county of New-Castle on Delaware at the proper cost and charge of the inhabitants of the said hundred: And if any horses or cattle shall at any time hereafter break into any field or inclosure of any of the inhabitants of the aforesaid hundred, being fenced as the law of this government directs, then and in that case it shall and may be lawful for the owner or possessor of such field or inclosure to put such horses or cattle in the pound aforesaid there.

1 Pound

2 cattle impounded

3 Notice of  
impounding

4 owner not  
appearing,  
appraisement  
and sale

to remain, until the damages, which shall be adjudged by the viewers of the fences within the said hundred to have been sustained, are paid by the owner or owners of such horses or cattle so impounded : But in case the owner or owners of such horses or cattle are not known or do not appear, the keeper of the pound shall and is hereby ordered immediately to cause notes to be affixed at the most public places in the said hundred, describing the marks and colour of such horses or cattle in his possession, and shall in the mean time provide the said horses or cattle with sufficient food and water. And if the owner or owners of such horses or cattle do not appear within the space of ten days after such impounding, it shall and may be lawful for the said keeper of the said pound to cause the said horses or cattle to be appraised by two creditable men inhabitants of the said hundred (they being first lawfully qualified), and to cause them to be sold at public vendue at the market place within the town of New-Castle aforesaid, and out of the money arising by the sale aforesaid to pay all charges of keeping such horses or cattle in the pound, and other costs together with such damages as the owners of such field or inclosure shall have sustained ; and the overplus (if any be) to be lodged in the hands of the County Treasurer for the time being there to remain for the full space of one year ; and if the owner or owners of such horses or cattle during that time do not appear, then the money so lodged in the Treasurer's custody to be applied for the use and benefit of the poor of the hundred aforesaid. But if it shall be found upon view by the overseers of the fences within the hundred aforesaid, that the fences of such fields or inclosures, wherein such horses or cattle have been taken trespassing, are not sufficient or lawful fences then and in such case the owner or owners of such field or inclosure shall pay all costs and damages which have accrued or shall accrue thereon.

Sect. 2. And in order that the design of erecting the pound aforesaid may not be defeated ;—The Justices of New-Castle county, in their next Court of Quarter Sessions, &c.

5 Poundkeep-  
er appointed

Sect. 3. The said Justices, at their sessions aforesaid or any succeeding sessions shall, and are hereby empowered to appoint a proper officer for keeping of the said pound, and to establish such fees to be paid to the said officer for his services, and for keeping the said pound in repair, as they from time to time shall think proper.

## II.

13 Geo. II.

AN ACT for establishing a market in the town of New-Castle, for appointing a clerk of the Market, and directing the assize of bread.

Market  
[30, 31, 32]  
[10, 11, 12, 13]

Whereas the want of a regular market in the town of New-Castle, in the county of New-Castle within this government hath been attended with great inconveniencies to the inhabitants thereof, as well as to such persons who offer provisions to sale in the said town: for remedy whereof,

Section 2. No person or persons whatsoever shall presume

either to buy or sell any kind of provisions (fish, milk and bread excepted) on market-days, within any part of the town of New-Castle but at the public market-house, under the penalty of forfeiting both by the buyer and seller all such provisions so sold or bought or the value thereof, to be levied together with costs by the clerk of the market, by distress and sale of the offender's goods and chattels respectively, by warrant under the hand and seal of any one Justice of the Peace of the said town or county.

Sect. 3. If any person or persons shall presume to bring to market and sell or offer to sale any meat or flesh that shall be poor, lean or carrion or any other provision not sound and wholesome, every person so offending shall forfeit the same, if sound and wholesome, [to the use of the prisoners in the common gaol of the said town or county], if unwholesome or unsound, to be thrown into the river.

Sect. 4. No person or persons whatsoever shall presume to kill or slay any cattle, sheep, calves or hogs within the said market-house, on penalty of forfeiting the sum of five shillings for every such offence, to be levied as aforesaid.

Sect. 5. If any person or persons whatsoever shall by themselves or others either sell or offer to sale any butter, cheese, tallow, or any sort of provisions by any false weights, or for more weight than the same shall be found to be by trial of the said clerk of the market for the time being, upon complaint made, such person or persons shall, for every such offence, forfeit such butter, cheese, tallow or provision so sold or offered to sale as aforesaid, [to the use of the poor of the town and hundred aforesaid,] and the clerk of the market is hereby empowered to seize the same.

Section 14. Said clerk of the market hereby appointed, or that shall hereafter be appointed by virtue of this Act, before he shall presume to enter upon his said office or execute the trust reposed in him, shall first take an oath or affirmation before some Justice of the Peace of the said county of New-Castle, *That he shall and will well and truly demean and behave himself in the office of clerk of the market aforesaid and impartially discharge the trust reposed in him by virtue of this Act during his continuance in that office.*

#### A SUPPLEMENT to said Act.

1806

Section 1. Tuesday and Friday of each week, and no other days, shall be deemed the regular market days in the town of New-Castle.

Sect. 2. The clerk of the market hereafter to be elected for the town of New-Castle shall before he enters upon the execution of the duties of his office, give a bond to the commissioners with such security, as shall be approved by a majority of the commissioners of the town of New-Castle, for the faithful performance of the duty required of him and for the paying over to the treasurer of the said town one moiety of the rents of the stalls in the said market.

Passed at Dover, January 30, 1806.

6 No provision sold on market days but at the market house [11-13]

[30, 31]

7 Poor, lean meat [31]

8 Penalty on slaughtering in the market house [31]

9 False weights — wanting weight [31]

10 Oath of clerk

11 Market days

12 Clerk's bond [30]

1807

## A FURTHER SUPPLEMENT.

Whereas the Act, to which this is a further supplement, is found insufficient in many respects, with regard to the regulations of the market in the town of New-Castle, and much hardship and inconvenience is experienced by the inhabitants of the said town, for want of better regulations, and more especially to prevent the injurious practice of forestalling; for remedy whereof—

13 Commis's  
to make regu-  
lations

proviso

Section 1. It shall and may be lawful for the commissioners of the town of New-Castle or a majority of them and they are hereby authorized to make, alter, repeal and again re-enact all laws, regulations and ordinances, which they may from time to time deem requisite and necessary for the better regulation of the market in the town of New-Castle: *Provided nevertheless*, that nothing in this Act shall be construed to authorize the said commissioners to exercise any powers repugnant to the laws and constitution of this State.

*Passed at Dover, Jan. 29, 1807.*

## III.

1797

## AN ACT for establishing the boundaries of the town of New-Castle, and for other purposes therein mentioned.

14 Survey &  
map  
[23]

Section 1.—[By this section James Booth, George Read the younger, Nicholas Vandyke, Archibald Alexander and John Crow are appointed commissioners, with authority to them or any three of them, taking with them a skillful surveyor to make an accurate survey of the town of New-Castle and to ascertain and fix the boundaries and limits of the same and to lay out, open and regulate the streets, lanes and alley within the same: the surveyor under the superintendence of the commissioners to make a map of the survey containing an account of the boundaries of the said town, and the courses, width and names of the several streets, lanes and alleys; the said map to be signed by the surveyor and commissioners and lodged in the Recorder's office for New-Castle county and there recorded; and said map or the record thereof is made competent evidence.]

15 Stones and  
posts for  
marks

Sect. 2.—This section provides that the commissioners shall fix posts or stones in the earth in the center or middle of the streets respectively, where they intersect each other, and that said stones or posts, as well as other stones or posts, that shall be fixed by commissioners hereafter to be appointed shall be in all courts of law allowed as land marks.]

16 Penalty  
for removing  
them

And if any person or persons shall at any time hereafter wilfully pluck up or remove any of the said posts or marked stones, and shall be thereof convicted in the Court of General Sessions of the Peace for the county aforesaid, he or they shall severally forfeit and pay the sum of forty dollars besides the costs of prosecution, to the use of the commissioners and inhabitants of the said town of New-Castle, to be employed in and towards defraying the expenses of carrying this law into execution.

17 Appeal

[By sections 3 and 4, an appeal is given and regulated, from the

acts of the commissioners or a majority of them "relative to the boundaries of the said town," and "the location of the said streets, lanes and alleys," to the next Court of Common Pleas or the next Supreme Court to be holden for the county of New-Castle.]

Sect. 5. The commissioners appointed by this Act shall continue in office until the first Tuesday in May, which will be in the year of our Lord one thousand seven hundred and ninety eight; on which day, and on the same day annually in future, the freeholders and inhabitants, who are taxables of the said town of New-Castle, shall meet in the Court House in the said town; and the electors between the hours of twelve in the forenoon 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 stiled commissioners; 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 to 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-walls, 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*, 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.

Sect. 6. *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; when such houses or buildings as aforesaid shall fall down by reason of decay, or otherwise be destroyed, 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 twenty dollars each, besides costs of prosecution, to be recovered in the name of the commissioners aforesaid by bill, plaint, or information in any court of record within this government, wherein no essoign, protection or wager of law shall be allowed, nor any more than one imparlance; and all such forfeitures shall be paid to the treasurer for the time being, to be appointed as is herein after mentioned, one moiety thereof for the use of the said town, and the other moiety to the prosecutor.

15 Election  
of commiss's

16 pavements  
& gutters  
(34)

17 party walls

18 Penalty  
for building  
without di-  
rections of  
commiss's

19 Fees.

Sect. 7. 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 buildings, the sum of one dollar each, and no more.

20 Partition fences

Sect. 8. 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 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 said parties; and if either party, between whom such partition fence is or shall be made, on request of the other, shall neglect 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, then the party, at whose cost the same was so made or repaired, may recover the same before any Justice of the Peace for the county of New-Castle as debts under forty shillings 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.

21 Penalty for obstructing or encroaching upon the streets

Sect. 9. The said commissioners shall be, and they are hereby authorized, empowered and required to guard against encroachments being made on any of the streets in the said town, to be laid out and regulated in manner as is herein before mentioned, and to remove any such encroachments, if any at present exist, or may hereafter be made on said streets, by reason of inclosures 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 presume to 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 Sessions of the Peace, shall be fined in any sum not exceeding fifty dollars to be paid to the treasurer for the time being, to be applied for the removing such nuisances and for defraying the expences arising from putting this law in execution.

22 Tax [17-53]

Sect. 10. 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 and 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 adjusting any matters or controversy relative to the bounds of the said town, streets, lanes, and alleys, for setting up and fixing land marks, for repairing the market house in the said town, and for erecting such number of public pumps in the streets of the said town as the said commissioners or a majority of them may think necessary, and 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 said commission-

23 assessment

ers 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.

Sect. 11. The said commissioners or a majority of them shall cause to be set up at the Court House in the town of New-Castle a duplicate of the assessment made in virtue of this Act ; and every person and owner or names of every estate within the said town so assessed shall within, twenty days after the said duplicate shall be set up at the Court House aforesaid, pay to the treasurer to be nominated and appointed by the said commissioners, 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 by sale of the delinquent or delinquents goods and chattels, lands and tenements, by warrant under the hand and seal of any one Justice of the Peace ; which such Justice is hereby authorized and required to issue at the instance and request of the said treasurer in the name of the whole or a majority of the said commissioners, and to direct the same to any constable of the said county, or to the sheriff of the county of New-Castle, at the discretion of the said treasurer ; and in such case, any sheriff or constable, to whom such warrant may be delivered, is hereby authorized and empowered to expose to sale by public vendue after ten days notice the said goods and chattels, lands and tenements of the delinquent or delinquents, and to sell the same to the highest and best bidder, and apply so much of the amount of sales as may be necessary to discharge the said assessment, and return the overplus, if any there be, to the owner or owners, deducting such legal costs therefrom as may be allowed by the laws of this State in such cases made and provided ; and the said commissioners shall settle their accounts annually before a committee to be appointed by the inhabitants of the said town, at a town meeting.

Sect. 12. 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.

Sect. 13. Every white free man of the age of twenty-one years having resided within the said town of New-Castle one year next before the election and within that time paid a State or county tax, and every other such freeman owner of property within the said town for one year next before the election and within that time having paid therefor a State or county tax, shall be, and they are hereby authorized and empowered to elect by ballot on the first Tuesday in May next and on the same day annually in future, or in case of neglect to elect that day then any other day after ten days notice, one suitable person to serve in the office of clerk of the market in

24 published

25 treasurer appointed

26 powers

27 Settlement of commiss'rs

28 payments by treasurer

29 his acc'ts

30 Clerk of market elected  
[ 10, 12 ]  
(Swine &c.  
40)  
page 517



the said town of New-Castle, who is hereby authorized, empowered and required to exercise the powers and perform the duties required to be done and performed by the clerk of the market of the said town of New-Castle by an Act entitled "An Act for establishing a market in the town of New-Castle, for appointing a clerk of the market, and directing the assize of bread."

(1) page 626

31 His perquis-  
sites

Sect. 14. All suits, penalties, fines and forfeitures, as are directed to be forfeited and paid by the said recited Act entitled "An Act for establishing a market in the town of New-Castle, for appointing a clerk of the market, and directing the assize of bread," shall be applied to the use of the clerk of the said market; and also the one moiety of the rent of the stalls in the market-house in the said town shall be applied to the use of the clerk of the market aforesaid, and the other moiety to and for the purpose of repairing the said market house, and keeping it in repair.

32 Rents of  
stalls in mar-  
ket fixed

Sect. 15. It shall and may be lawful for the said commissioners or a majority of them annually or as often as there shall be occasion, by warrant under their hands and seals to nominate and appoint three persons inhabitants of the said town to ascertain and fix the rents of the stalls in the said market house; and the clerk of the market shall not demand, take or receive from any person or persons whatsoever, for the rent of the stalls, any greater sum than may be so ascertained and fixed as aforesaid, on penalty of forfeiting the sum of ten dollars, one moiety thereof to the use of the person who shall sue for the same, and the other moiety for the use of the inhabitants of the said town.

*Passed June 3, 1797,*

1804

#### A SUPPLEMENT to said Act.

33 Ground-  
plan

Section 1. The commissioners of the town of New-Castle shall have full power and authority to make a ground plan of the said town, ascertaining the ascents and descents of the streets, lanes and alleys within the same, which may be necessary for the regulation of buildings to be erected in future so as to determine the elevation of the ground floor above the surface of the streets and also for carrying off the water by gutters and common sewers, and shall lay out the proper pavements and gutters in front of dwelling houses, and continue the same with a footway on the inside of those gutters, not less than three feet in breadth in front of unimproved lots and parts of lots within the said town, to wit, from Vine-street along both sides of Delaware-street to Front-street and further if deemed necessary, along both sides of Front-street from Delaware-street to the Northeastern side of Harmony-street and further if deemed necessary, the whole length of Market-street on both sides thereof, along both sides of Orange-street from Delaware-street to Harmony-street aforesaid and further if deemed necessary, and along such other streets within the said town, as may be deemed necessary by the commissioners aforesaid; and after the said gutters, pavements or footways are laid out, the owner or owners, guardian or guardians of minor owners of any buildings or lots, in front of which such gutters, pavements or footways are

34 gutters,  
pavements,  
&c.

laid out, shall cause the same to be made in the manner directed by a majority of the commissioners aforesaid, within ninety days thereafter; and if the owner or owners, guardian or guardians of minor owners as aforesaid shall neglect or refuse to make the said gutters, pavements or footways, for the space of time aforesaid, then it shall be lawful for a majority of the commissioners aforesaid and they are hereby authorized to cause the said gutters, pavements or footways to be made; and the expense of the same shall be paid by the owner or owners, guardian or guardians of minor owners of buildings or lots, in front of which any such gutters, pavements or footways shall be made by the order of a majority of the commissioners aforesaid, to the person or persons whom they shall have authorized to make the same; and if the owner or owners, guardian or guardians of minor owners shall neglect or refuse to pay the person or persons, who may have been authorized in manner aforesaid, for the space of thirty days, then it shall be lawful for a majority of the commissioners aforesaid and they are hereby authorized to issue their warrant directed to the sheriff of New-Castle county, who is hereby authorized and directed after ten days public notice to sell so much of the goods and chattels of the owner or owners, guardian or guardians of minor owners aforesaid at public sale, and apply so much thereof to the payment of the expenses of making such gutters, pavements or footways made by order of a majority of the commissioners aforesaid, and after deducting such legal costs therefrom, as is herein after provided for, return the overplus, if any, to such owner or owners, guardian or guardians of minor owners as aforesaid: *provided always*, that if a guardian or guardians of minor owners shall cause such gutters, pavements or footways laid out by a majority of the commissioners aforesaid to be made in manner directed as aforesaid, the said guardian or guardians of minor owners as aforesaid shall be allowed the expenses thereof on settlement of their guardianship accounts, before the Register of New-Castle county.

35 making  
gutters, &c.  
when owners  
refuse

& recovering  
expenses

39 guardian  
allowed

Sect. 2. When the said ground plan and elevations as aforesaid shall be so made and agreed upon by the commissioners aforesaid and a plot or map thereof made, the same shall be lodged in the Recorder's office for the county of New-Castle there to be recorded or enrolled, and be thereafter unalterable; and the 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 ground plan and elevations of the streets, lanes and alleys within the town of New-Castle.

37 Ground-  
plan recorded

39 Evidence

Sect. 3. It shall be lawful for any tenant of those lots of a delinquent owner or owners to pay to the commissioners aforesaid or their order the amount of the expense which may be incurred by making the said gutters, pavements or footways, and the same shall be a good discount against his landlord for any rent which may be due, or thereafter become due.

39 Tenants  
may discount  
expense ag<sup>t</sup>  
rent

Sect. 4. In case sufficient goods or chattels of the owner or owners of the said lots, in front of which any such gutters, pavements or footways shall have been made in manner aforesaid, cannot be found within the precincts of the said town, in such case after thirty days notice to the owner, if he or she resides within this

40 Sale of  
lots for ex-  
penses (52)

State, or if out of the State two months notice given by advertisement in some public gazette, the commissioners aforesaid are hereby authorized to issue their warrant directed to the sheriff aforesaid, who shall seize, sell at public vendue and convey the whole or so much of the aforesaid lots, as the said commissioners by their warrant shall order and direct, to defray the expence which may be incurred by making the said gutters, pavements or footways, and if any surplus, to pay over the same to the owner or owners aforesaid.

41 Public  
lamps

42 penalty, for  
destroying

43 Inspector  
of flour and  
wood-corder

44 their oath

45 Compensa-  
tion to in-  
spector and  
corder

46 penalty for  
extortion

47 Tax

47 Treasurer's  
bond

Sect. 5. The commissioners aforesaid or a majority of them are hereby authorized to provide for erecting such number of public lamps in the said town, as they may deem needful, and for lighting and keeping the same in repair; and after the said lamps shall be erected, if any person or persons shall wilfully and maliciously break, pull down or otherwise destroy any of the said lamps, or extinguish the same when lighted, he, she or they so offending shall forfeit and pay any sum not exceeding thirty-two dollars for each and every such offence, upon due proof thereof being made before any Justice of the Peace within the county of New-Castle, who is hereby authorized and directed to issue his warrant to any constable of the said county, directing him to levy the amount thereof on the goods or chattels of the offender or offenders, or for want of goods or chattels to commit him, her or them to the work house in the town aforesaid for any term not exceeding three months, there to be kept at hard labor.

Sect. 6. The commissioners of the town aforesaid or a majority of them are hereby authorized to appoint annually in the month of May an inspector of flour and a corder of wood for the town of New-Castle aforesaid, and upon the death, removal from the town, misbehavior or refusal to serve as inspector or wood corder as aforesaid, to appoint others in their place; and all such inspectors or wood corders appointed as aforesaid shall take an oath or affirmation, that they will discharge the duties of their respective appointments faithfully and impartially.

Sect. 7. The inspector of flour shall receive for inspecting flour, one cent per barrel; and the corder of wood shall have and receive for cording each cord of wood, the sum of twelve and an half cents, all which sums shall be paid equally by the buyer and seller; and if any inspector of flour or corder of wood shall take or demand any greater fees than are herein specified, such inspector or corder shall forfeit and pay for every such offence the sum of thirty dollars, upon due proof thereof, before a majority of the commissioners aforesaid, to be recovered by warrant under their hands and seals, directed to the sheriff of the county aforesaid, who is hereby authorized to levy the same on the goods and chattels of the offender, and after ten days public notice to sell so much thereof as will pay the said fine and his legal costs.

Sect. 8. The commissioners of the town aforesaid or a majority of them are hereby authorized and empowered to lay a tax on the inhabitants and estates within the said town for carrying into effect the provisions of this Act.

Sect. 9. The treasurer of the town of New-Castle aforesaid hereafter to be appointed by the commissioners aforesaid shall be-

fore he enters on the duties of his office, give bond in the name of the said commissioners with warrant of attorney thereto annexed, in double the amount of the tax by him to be collected, with at least one good and sufficient freeholder to be approved by a majority of the commissioners aforesaid, as surety for the faithful performance of his duty as treasurer.

Sect. 10. The surplus of any taxes heretofore laid upon the inhabitants and estates within the town of New-Castle aforesaid by virtue of the Act, to which this is a supplement, together with all the penalties, that may be incurred under this Act, shall be appropriated by the commissioners aforesaid to the objects contemplated herein. 49 Surplus taxes

Sect. 11. It shall not be lawful for any person or persons whatsoever, to shoot or discharge any loaded musket, fowling piece, fuzee or pistol within the limits of the town of New-Castle aforesaid, under the penalty of forfeiting and paying for every offence by him or them, so committed, the sum of one dollar to be recoverable on the view of any one Justice of the Peace, within the said town, or on the information of one or more reputable witnesses: provided always, that nothing herein contained shall be construed to prevent the firing of cannon and small arms on days of public rejoicing or on the days and times of military parade. 50 Shooting within town, penalty

Sect. 12. The sheriff of the county of New-Castle shall have and receive for the performance of the duties enjoined on him by this Act the like fees, as he is entitled to for similar services by the laws of this State; and that the bond given by him for the faithful execution of his office, be extended for the due performance of the duties herein enjoined on him. 51 proviso

*Passed at Dover, Jan. 20, 1804.*

#### AN ADDITIONAL SUPPLEMENT.

1825

Section 1. It shall be lawful for the commissioners of the town of New-Castle or a majority of them to levy and assess on the persons and estate within the town of New-Castle such sum or sums of money, as may be deemed necessary, to procure for the fire companies within the said town such apparatus as may be useful in preventing destruction by fire, and for keeping the same in repair; which sums assessed by the commissioners of the said town shall be collected by the treasurer of the said town in the same manner as county rates and levies are collected by the laws of this State. 53 Tax to supply Fire companies

*Passed at Dover, February 7, 1825.*

#### IV.

AN ACT to enable the persons therein named to raise a sum not exceeding twelve thousand dollars by a lottery, for the purpose of erecting piers in the harbor of the town of New-Castle.

1791

Piers  
(U. States)

Section 5. If any of the said piers shall be built, erected or placed opposite to any of the public streets of the said town of New- 54 Streets opposite piers to remain open

Castle, the said streets shall remain open and unobstructed to low water's mark, so as to afford a free and easy passage, or egress and regress, to and from the town to the said piers.

*Passed February 7, 1794.*

V.

1772 **AN ACT** for vesting the State House and other public buildings with the lot of ground whereon the same are erected together with other ground situate in the town of New-Castle, in Trustees for the uses therein particularly mentioned.

55 Settlement upon trust of-

Whereas the lot of land situate in the square called the Market Square, in the center of the town of New-Castle, and contained within the bounds following,—*to wit*. Beginning at a stone placed for a corner on the north-east side of the Market-street and at the north-west end of the State House, and extending thence north fifty-one degrees east fifteen perches to a stone placed for a corner in the said square [the said line running two perches from the north-west end of the said State House], thence south thirty-nine degrees east eight perches to another stone placed for a corner in the said square, thence south fifty-one degrees west fifteen perches to another stone placed for a corner on the north-east side of Market-street aforesaid, and from thence along the said street and bounded therewith north thirty-nine degrees west eight perches to the place of beginning.—hath at all times been considered, taken and held as ground dedicated to the use of the public, and accordingly a State House, gaol and other buildings have been erected thereon at the charge of the county of New-Castle: Now to the end and intent that the said State House, gaol, buildings and lot of land described as aforesaid may be effectually secured for the public, and that the legal estate and inheritance therein may be vested in trustees to and for the uses and purposes herein after mentioned and specified;

56 The State house

Section 1. The said State House, buildings and lot of land and all the immunities, improvements, advantages, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the remainder and remainders, reversion and reversions thereof shall from and after the passing of this Act be settled upon and vested in Thomas M'Kean, George Read, John M'Kinly, Alexander Porter, George Monro, John Evans and David Thompson, gentlemen, and the survivors and survivor of them and the heirs and assigns of such survivor for ever; upon the trusts nevertheless, and to and for the ends, intents and purposes, and subject to the uses herein after mentioned, expressed and declared, *That is to say*; as to the said State House, that the same shall be to and for the use of the Representatives of the freemen of these counties, which now are and from time to time hereafter shall be duly elected by the freemen aforesaid, at all times when in Assembly met, and to and for such other uses, intents and purposes, as the said Representatives, during the time they shall be so convened in Assembly shall direct and appoint, and to and for the use of the Jus-

57 for the use of the Assembly

tices of the Supreme Court of this government, for the holding of said court as long as the said court shall from time to time be adjourned and continue; and at all other times, the said State House and the wings adjoining the same, for use of the Justices of the county Court of Common Pleas and Justices of the Court of Quarter Sessions for the said county of New-Castle, for the holding courts therein, and to and for such other uses intents and purposes, as they the said Justices of the Court of Quarter Sessions at the General Sessions to be holden at New-Castle for the county of New-Castle on the third Tuesday in May yearly and every year shall direct and appoint; and as to the under sheriff's and gaoler's houses, the gaol, work-house and yards, with the appurtenances, to the use of the sheriff of the said county of New-Castle for the time being, for the residence of himself, his under sheriff and gaoler, and for the safe custody of all and every person and persons to him legally committed, and for such other purposes as the same have been usually applied to, for the service of the said county: And upon this further trust and confidence, and to this further end, intent and purpose, that the said Thomas M'Kean, George Read, John M'Kinly, Alexander Porter, George Monro, John Evans and David Thompson and the survivors and survivor of them, and the heirs of such survivor, shall from time to time and at all times hereafter, permit and suffer such suit and suits, action and actions to be commenced and prosecuted in his or their names, and also make, seal, deliver, execute and acknowledge such deed or deeds, conveyance or conveyances, fines, recoveries or assurances in the law whatsoever for the said lot of land, buildings, tenements and hereditaments, settled and vested in the said trustees as aforesaid or any part or parcel thereof, to such person or persons, and in such manner and form, but to the uses aforesaid, as the Justices of the Court of Quarter Sessions for the county of New-Castle aforesaid shall at any time or times hereafter direct and appoint: So always, that the said Thomas M'Kean, George Read, John M'Kinly, Alexander Porter, George Monro, John Evans and David Thompson, and their heirs, executors and administrators and every of them be well and truly indemnified, saved and kept harmless of and from any costs, charges, trouble or molestation whatsoever, which may arise for or by reason of such suits, deeds, conveyances, fines, recoveries or assurances so to be commenced, prosecuted, made and executed.

Sect. 2. *And whereas* another lot of land situate in the Market square in the town of New-Castle aforesaid, and bounded as follows, *to wit*, Beginning at a stone placed for a corner on the south-west side of Mary-street, being also the north-west corner of the graveyard or burying ground, belonging to Immanuel Church, and extending from thence north forty-six degrees thirty minutes west five perches and three tenths of a perch to the street or road leading from Wilmington, leaving the said street forty feet for width, thence along the same street or road south forty-five degrees west ten perches to a stone placed for a corner, thence extending south forty-six degrees, thirty minutes east five perches and three-tenths of a perch to another stone placed for a corner, and from thence along the pale fence of the graveyard aforesaid

58 Supreme Court

59 Common Pleas & Qr. Sessions

60 Gaol, &c.

61 Gaol, &c. for use of sh'ff N. Castle c'ty for the time being

62 School

north forty-five degrees east ten perches to the place of beginning, hath at all times been considered, taken and held, as ground dedicated and set apart for the use of the said town; *And whereas* the inhabitants of the said town intend to erect a school house thereon, and are desirous of having the same appropriated and applied to that use. The said lot of land last described, and all the immunities, advantages, hereditaments and appurtenances to the same belonging, or in any wise appertaining, and the remainder and remainders, reversion and reversions thereof, shall, from and immediately after the passing of this Act, be settled upon and vested in David Finny, John Thompson, George Read, Thomas M'Kean and George Monro, gentlemen, and the survivors and survivor of them, and the heirs and assigns of such survivor, in trust nevertheless for the erecting a school house or school-houses thereon, and to be for that use forever.

Sect. 3. *And whereas* another lot of ground situate also in the market square, in the town of New-Castle, whereon Immanuel Church stands, and the grave yard or burying ground of the said church is laid out, bounded as follows, *to wit*, beginning at a corner stake of the herein before described school house lot, being also the north-west corner of the grave yard or burying ground belonging to Immanuel Church aforesaid, on the south-west side of Mary-street and running thence south forty-five degrees west ten perches along the line of the said school house lot to another stake set for a corner, thence south forty-six degrees east ten perches and eight tenths of a perch to a post in the market square, thence north forty-seven degrees east ten perches to Mary street aforesaid; and thence along said Mary street north forty-six degrees thirty minutes west to the place of beginning, hath been and is now set apart and appropriated to and for the use of the members of the Episcopal Church of England, residing and dwelling in and about the said town of New-Castle, who being desirous that the same should be forever hereafter confirmed to and for the uses aforesaid.

63 Immanuel church and grave-yard

Sect. 4. The legal estate and inheritance of and in the said church, burying ground and last described lot, with the appurtenances thereto belonging, shall be and is hereby declared to be from henceforth vested in the reverend Æneas Ross, Richard M'William and Joseph Tatlow and the survivors and survivor of them and the heirs of the survivor forever, in trust nevertheless, to and for the use, benefit and behoof of the members of the Episcopal Church of England, residing and hereafter to reside in and about the said town of New-Castle, as a place of worship and burial-ground forever, and to no other use, intent or purpose whatsoever.

64 The residue of market square vested in trustees for use of inhabitants of New-Castle forever

Sect. 5. *And whereas* the remaining part of the aforesaid market square hath at all times been considered, taken and held as ground belonging to the inhabitants of the said town of New-Castle for holding of fairs, markets and other public uses, and a market house hath accordingly been erected thereon at the charge of the said inhabitants;—the residue or remaining part of the said market square not herein before settled on trustees, and all the immunities, improvements, advantages, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the

remainder and remainders, reversion and reversions thereof shall be settled upon and vested in David Finny, John Thompson, George Read, Thomas M'Koan and George Monro gentlemen and the survivors and survivor of them, and the heirs and assigns of such survivor, in trust nevertheless for the use of the inhabitants of the said town of New-Castle forever.

Sec. 6. This Act shall be deemed, adjudged and taken to be a public Act, and shall be judicially taken notice of as such by all Judges, Justices and other persons whatsoever, without specially pleading the same.

Passed June 13, 1772.

PENALTY FOR INJURY TO CERTAIN WORKS.

AN ACT to unite the company of owners and possessors of the marsh, cripple and low grounds lying on and at the head of Heron gut in Little creek hundred, Kent county and State of Delaware, to the Simon's creek marsh company, and for other purposes.

1823

(Penalties)  
page 425

[In section 6 is mentioned the tract of marsh granted to Thomas Clayton and Jacob Stout esquires by an Act of the General Assembly passed at Dover on the second day of February in the year of our Lord one thousand eight hundred and eighteen.]

Sec. 8. If any person or persons shall destroy, break or in any manner injure any of the banks, dams, trunks or sluices which have been made or may hereafter be made and constructed upon the said tract of marsh granted to the said Thomas Clayton and Jacob Stout esquires as aforesaid, every such breaking, injuring or destroying of the said dams, banks, sluices or trunks or either or any part of the same, shall be an indictable offence, and every person so destroying, breaking or injuring any of the said dams, banks, trunks or sluices or any part thereof, or aiding, abetting or counselling therein or thereto, shall be liable to be proceeded against in the Court of Quarter Sessions of the Peace and Gaol Delivery in Kent county aforesaid by indictment, and on conviction shall be fined in any sum not exceeding two thousand dollars at the discretion of said court, and shall be sentenced to pay the said fine with all the costs, and such proceedings shall be had as in all other cases of indictable offences, and one half of the said fine shall be paid to the said Clayton and Stout or their heirs or assigns being owners or possessors of the premises so injured at the time of such proceedings.

1 Marsh  
granted to T.  
Clayton & J.  
Stout

2 Injuring  
banks  
penalty

Passed at Dover, Feb. 1, 1823.



1793

AN ACT to regulate certain public buildings in the town of *Dover*, in Kent county, and in *George-Town*, in *Sussex* county.

1 Dover

Section 1. The whipping-post and pillory to be erected in the county of Kent shall be put up and erected on the Court House lot in the town of *Dover* on the eastside of the Court House in such convenient situation as the prothonotary shall direct; and the whipping-post and pillory now erected in *George-Town* shall be taken down and removed from the place where they now stand, and shall be put up on the public lot on the east side of the Court House in *George-Town* between that and the gaol, in such convenient situation as the prothonotary of the county shall direct.

2 George-town

3 Not to be removed

Sect. 2. It shall not be lawful for the Levy Court and Court of Appeal, or any other court whatever, to remove the said whipping-posts and pillories, or to cause new ones to be erected in any other situations.

Passed, June 14, 1793.

## RECORDS.

### I.

1770

AN ACT for the making divers copies of records duly authenticated under the Great Seal of the province of *New York*, and other copies, public records, and for rendering real estates within this government more secure.

1 Copies from New-York

[The substance of the preamble is—that these counties before the twenty-fourth day of August, one thousand six hundred and eighty-two, were under the jurisdiction of the province of *New York*, and lands were granted by the Governor of that province, and many of the orders of the Governors, minutes of Council, warrants, surveys, patents and deeds for the same were filed and recorded in the Secretary's office there; said original papers being entered in the books and records of said office with other original papers relating to lands &c. in that province, so that said original papers cannot be obtained; that the Assembly of this government had procured as many of the orders of Governors, minutes of Council, surveys, patents, deeds, wills and original papers there filed and recorded, as related to lands, tenements and hereditaments within these counties and could there be found, to be transcribed by *Thomas McKean* esquire: which being authenticated by the oaths of *Goldsbrow Banyar* &c. and under the great seal of said province, wrote on two hundred and eighty-one sides or pages and certified and signed by the said *Thomas McKean*—are bound up in one book in folio—

Also that it appeared to the Assembly, that the records of divers proceedings in the several courts within these counties, and of warrants, surveys, patents, deeds and wills registered and recorded

before the year one thousand seven hundred, relating to lands, tenements and hereditaments were greatly defaced and must soon become unintelligible.]

Section 1. The aforesaid book certified and authenticated as aforesaid under the great seal of the province of New York shall be and is hereby declared and made a public record of this government to all intents and purposes whatsoever. <sup>2 declared records</sup>

[By section 7 it is enacted, that copies of said book or any particular therein contained, attested under the hand and seal of office of the officer, who may have the custody (a) thereof, shall be given in evidence, and shall be considered as good, as copies of the originals.] <sup>3 Copies evidence</sup>

Sect. 6. The following books remaining in the several offices in these counties, to wit, one book in folio in the prothonotaries office for the county of New-Castle marked *A*, commencing the tenth day of October, one thousand six hundred and seventy-six and ending the twenty-first day of November, one thousand six hundred and ninety-nine and wrote on five hundred and thirty sides or pages, containing entries of orders, grants, surveys, actions and acknowledgments of deeds, &c. for lands in the said county of New-Castle, and one other book in folio remaining in the office for recording of deeds in the said county of New-Castle marked *A*, containing patents and deeds, beginning with a deed dated the thirtieth day of January, one thousand six hundred and seventy-three and ending with a patent dated the twenty-third day of May, one thousand six hundred and eighty-four and wrote on one hundred and eighty-five sides or pages, and one other small book in folio remaining in the office of the Register for the probate of wills and granting letters of administration for the said county of New-Castle, marked *A*, beginning with a will dated the sixteenth day of February, one thousand six hundred and seventy-nine, and ending November the fourteenth, one thousand six hundred and eighty-seven, and wrote on one hundred and five sides or pages; [the said books respectively being certified under the hands of Evan Rice and Thomas M'Kean esquires a committee of the said Assembly appointed for that service, to have been by them carefully compared with the original records and to be true copies thereof], and one other book in folio remaining in the office for recording of deeds in the county of Kent, marked *A*, beginning in June, one thousand six hundred and eighty, and ending the twelfth day of December, one thousand six hundred and ninety-four, wrote on fifty-seven sides or pages, and one other book in folio remaining in the office of the Register for the probate of wills and granting letters of administration for the said county of Kent, marked *A*, and beginning with letters of administration, dated the twenty-first day of December, one thousand six hundred and eighty and ending with such letters dated the fifth day of May, one thousand seven hundred and ten, and wrote on one hundred and seventy-three sides or pages, [the said books being transcribed under the direction of John Brinkle and Caesar Rodney esquires another committee of said Assembly appointed for that service, and certified by <sup>4 Record in several counties transcribed</sup>

(a) By section 14 of the Act of 1793, "for opening and establishing a Land Office," &c. it is provided, that this book shall be deposited in the Recorder's office at Dover.

the said Caesar Rodney, to have been carefully compared with the original records, and to be true copies thereof], and one other book in folio remaining in the office of the prothonotary for the county of Sussex marked *A*, and wrote on three hundred and thirty-five sides or pages, containing entries of grants, surveys, acknowledgments of deeds, &c. for lands in the said county of Sussex, and one other book in folio remaining in the office for recording of deeds in the said county of Sussex, marked *B*, and wrote on one hundred and eighty-one sides or pages, [the said books being respectively certified under the hands of David Hall and Jacob Kollock junior esquires, another committee of the said Assembly appointed for that service, to have been by them carefully compared with the original records, of which they are true copies],—from and after the publication of this Act shall be and are hereby declared and made public records to all intents and purposes whatsoever.

5 Copies evidence

[By section 8, it is enacted, that all copies of said books or any particular therein contained, attested under the hand and seal of the proper officer, ("it being also by him certified that the original record of the same is lost, defaced or unintelligible") shall be given in evidence and considered as good as copies of the originals.]

Passed March 24, 1770.

## II.

1801 AN ACT to procure certain papers, or copies thereof, from the Land Office in Pennsylvania.

Whereas from the former communication between Delaware and Pennsylvania as to jurisdiction and government, many of the warrants, surveys, patents and grants for lands within the State of Delaware were filed and recorded in the land office of Pennsylvania, whereby the inhabitants of this State have sustained great hardships and expense in procuring authenticated copies of such original papers and records:—

6 Agent to procure papers

Section 1. [By this section the governor is authorized to appoint an agent to procure to be transcribed all such warrants, surveys, patents, grants and other original papers as might be found in the land office or any other office of the State of Pennsylvania, which relate to lands, tenements or hereditaments in this State and which cannot be removed, and to obtain all such original warrants, surveys, patents, grants and original papers, which can be taken—and bring the same into this State and deposit them in the office for recording of deeds in Dover as public records.]

Passed at Dover, January 30, 1801.

1803 AN ACT authorizing the distribution of certain public papers relating to lands in this State.

7 Papers procured, distributed

Section 1.—[By this section David Lockwood is appointed to divide the public papers lately obtained from the State of Pennsylvania by Samuel White the agent appointed under the preced-

ing Act (II) and deposit the same in the offices for recording of deeds in the counties, which the same concern.]

Sect. 2. The said public papers so divided and deposited shall be deemed and taken as public records; and it shall be lawful for the several Recorders aforesaid to make out and grant exemplifications thereof, which shall be taken and received as evidence, as exemplifications of the papers aforesaid have heretofore been taken and received, while they remained in the several offices of the State of Pennsylvania aforesaid. 8 To be deemed public records

Sect. 3. The patents, copies of patents or other public papers, that may hereafter be obtained from the State of Pennsylvania by the agent aforesaid or his successor, shall be and he is hereby directed and required to transmit and deposit the same in the office of the Recorder for the counties respectively, to which they may relate or belong; and the same being so transmitted and deposited shall be deemed and taken as public records; and it shall be lawful for the Recorders respectively to make out exemplifications thereof, which shall be taken and received as evidence in the same manner as exemplifications from the originals heretofore taken and received, when obtained from the State of Pennsylvania aforesaid. 9 Papers hereafter obtained

*Passed at Dover, Jan. 27, 1803.*

[By a Supplement of January 23, 1806, to the preceding Act, it is enacted, that the papers mentioned in said Act and deposited pursuant thereto in the several offices for recording of deeds, which shall be deemed necessary or useful by persons appointed to examine them, shall within twelve months *[extended by an additional supplement of Feb. 6, 1807 for one year, and by a further additional supplement of February 4, 1808 for another year]* be recorded by the Recorder of deeds for the respective counties in one or more well bound books in folio; and that the books, wherein said papers shall be recorded, shall be deemed public records; and that it shall be lawful for the Recorders respectively to make exemplifications thereof, which shall be received as evidence in the same manner, as exemplifications from the originals.] 10 Recorded

[Sect. 2. And the Governor is required to appoint three persons in each county to examine said papers and to report to the Recorder for the county such, as they or a majority of them shall deem necessary, to be recorded, and after recording, they or a majority of them are authorized to compare the record with the originals and certify the same under their hands and seals in said books.]

[By an additional Supplement of February 6, 1807 the persons appointed in Kent county, are authorized to examine the papers in the Recorder's office in that county called *Stephenson's Papers* and direct such, as they shall deem necessary, to be recorded, and if they shall find among these papers any belonging to New-Castle or Sussex, to direct them to be sent by the Recorder of Kent to said respective counties to be subject to the examination of the persons there appointed and to be recorded, if thought necessary.]

## III.

1810 AN ACT to procure certain papers or copies thereof from the Land Office of the State of Maryland.

11 Papers  
from Maryland

[By this Act the Governor is authorized to appoint an agent to procure to be transcribed, under his care and direction, in one or more well bound books in folio, all such warrants, surveys, patents, grants and other original papers, as may be found in the land office or in any other office of the State of Maryland, which relate to any lands, tenements or hereditaments in this State, and cannot be removed, and to compare said copies with the originals, and also to obtain all such original warrants, surveys, patents, grants and other original papers, which can be taken, and to bring said transcripts, and original warrants, surveys, patents, grants and other original papers into this State, that the same being first examined and approved by the Legislature of this State, may be deposited in the office for recording of deeds in Dover, as public records.]

The agent, and his assistant or assistants are required before entering on the duties to take an oath or affirmation, that he or they will faithfully and diligently discharge the trust reposed in him or them.]

*Passed at Dover, January 9, 1810.*

## IV.

1812 AN ACT to authorize the Recorder of Kent county to transcribe certain records belonging to his office, and for other purposes.

12 Recorder's  
office—Kent

[By this Act the Governor is authorized to appoint two commissioners to examine the record books belonging to the office of the Recorder of deeds in Kent county and to certify, which and how much of said books it is necessary to transcribe, and which of said books should be newly bound : and the Recorder is required to cause the records certified for that purpose to be transcribed within twelve months ; and the said commissioners are required to compare and correct the same by the original records and to certify thereon, that they have collated the same with, and corrected the same by, the original records, and that they are true copies ; and it is provided, that the books, wherein said papers are so recorded, shall be deemed public records, and that it shall be lawful for the Recorder to make exemplifications thereof, which shall be received in evidence as exemplifications from the original.]

*Passed at Dover, Feb. 10, 1812.*

## V.

AN ACT to authorize the commissioners of the Land office for the county of Sussex, to appoint a person to transcribe the Caveat docket, in the county of Sussex. 1806

[By this Act the commissioners of the Land office in Sussex county are authorized to cause the caveat docket in said county to be transcribed in one or more well bound books in folio.] “And the said caveat docket when so transcribed and copied shall be deposited in the Recorder’s office for the said county of Sussex and shall be deemed and taken as a public record; and the Recorder of the said county shall, after the said book or books is or are deposited in his office, enter therein in a fair and legible hand all proceedings of the commissioners of the land office for the said county touching or concerning any caveat that may thereafter be entered before the Recorder of said county.” 13 Caveat docket Sussex

*Passed at Dover, January 23, 1806.*

## VI.

AN ACT making provision for the preservation of some of the records in Sussex county. 1827

[By this Act Thomas Robinson senior, Matthew Rench and George Rodney are 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 the Recorder shall copy or cause to be copied in well bound books the same; the commissioners shall compare and correct said copies by the originals, and after they have certified this, the Recorder shall certify under his hand and seal of office at the end of the book containing the copies, that the same have been compared and corrected and are true and perfect copies; and the said copies and 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 the same credit, as the original records. 13 Recorder's office, Sussex

In case of vacancy in the board of commissioners the other commissioners are empowered to fill the same.]

*Passed at Dover, January 23, 1827.*

## VII.

[By Act of 1810 the Governor was authorized to appoint two commissioners to examine the record books belonging to the office of the Register for the probate of wills and granting letters of administration for Kent county and certify the records it was necessary to transcribe; and the Register was required thereupon to transcribe or cause to be transcribed the said records; and it 14 Register's office—Kent

was thereupon the duty of the commissioners to compare and correct the same by the originals and to certify, that they had collated the same with and corrected them by the original records or the books so transcribed, and that they were true copies thereof; and it was provided, that the book or books, wherein the said papers were so recorded, should thereafter be deemed and taken as public records and it should be lawful for the Register to make out exemplifications thereof.]

## VIII.

15 Court of  
Com. Pleas—  
Kent

[By Act of 8 February, 1820, the Governor was authorized to appoint two commissioners to examine the records of the Court of Common Pleas in Kent county and certify the records it was necessary to transcribe; and the prothonotary was required to transcribe or cause to be transcribed the said records; and it was the duty of the commissioners thereupon to compare and correct the same by the originals, and certify them to be true copies; and it was provided, that said copies so made, examined and certified should "have and receive in all respects the same faith and credit as the originals."]

16 High Ct. of  
Errors & App.

[By Act of January 20, 1824, the clerk of the High Court of Errors and Appeals was authorized to transcribe or cause to be transcribed the dockets of said court from August term, seventeen hundred and ninety-five to August term eighteen hundred and twenty-four; and it was made the duty of two commissioners to be appointed by the Governor to compare and correct the same by the originals, and to certify the same to be a true copy; and it was provided, that the copy made, examined and certified as aforesaid should "have and receive in all respects the same faith and credit as the originals."]

Court of  
Chancery—  
Kent

[By Act of February 7, 1825 the Register of the Courts of Chancery in Kent county was authorized to transcribe or to cause to be transcribed, the docket of said court from August term eighteen hundred and one, to August term eighteen hundred and twenty-four; and it was made the duty of two commissioners to be appointed by the Chancellor to compare and correct the same by the originals and certify the same to be a true copy; and it was provided, that the copy so made, examined and certified should "have and receive in all respects the same faith and credit as the originals."]

—o—

## ROADS IN NEW-CASTLE COUNTY.

## I.

1762

AN ACT for the better regulation of the roads in New-Castle county.

Section 2. A public road or highway shall be laid out, leading through the said county, beginning at the road leading from Ches-

ter at the line between the counties of Chester and New-Castle, and from thence over Naaman's creek to Brandywine creek, and from thence two public roads or highways shall be laid out—the one over (a) Christiana ferry near the house of Thomas Jaquet, and from thence to New-Castle, and from thence to the inn called the Red Lion, where John Rankin now dwells, and from the said Red Lion to the village called St. George's, and from thence to Appoquinimink bridge, and from thence over Blackbird bridge to the town of Salisbury commonly called Duck creek,—and the other from Brandywine aforesaid to Wilmington, and from thence to Newport, and from thence (b) to Christiana bridge, and from thence to the Red Lion aforesaid, and from thence to the inn now kept by Walter Crow, and from thence to the inn now kept by Joseph Jaquet, and from thence to Blackbird bridge aforesaid: and also a public road or highway shall be laid out from New-Castle to Christiana bridge aforesaid.

Sect. 3. The said roads shall be of the breadth of sixty feet, forty feet whereof shall be grubbed and cleared.

[By section 4, commissioners are appointed to lay out the roads, &c.]

*Passed November 2, 1762.*

**A SUPPLEMENTARY ACT** for the amendment of *An Act of General Assembly of this government, intituled, An Act for the better regulation of the roads in New-Castle county.*

1764

Whereas the proceedings of a majority of the commissioners appointed by an Act of Assembly of this government intituled *An Act for the better regulation of the roads in New-Castle county*, in laying out the two King's roads therein particularly mentioned, and returned into the office of the clerk of the peace at New-Castle, have occasioned some discontent and dissatisfaction to divers of the inhabitants of the said county; For remedy whereof:—

(1.)

Section 2. John Stapler and Thomas Tobin, esquires, David Stewart, George Monro, and John M'Kinly gentlemen or any three of them are hereby authorized, empowered and required to review the King's roads aforesaid and lay out the same through the county of New-Castle, touching at the several places mentioned and set down in the said Act in such manner, as they shall judge to be most advantageous to the public and least injurious to the owners of the adjoining lands, without favor or respect to any person or persons whatsoever, and to employ such surveyor or surveyors, laborers and workmen, as they shall think necessary in platting and lay-

1 Over Naaman's creek, Christiana ferry, N. Castle, Red-Lion St. Georges, Black bird—to Duck creek (5)

2 Brandywine, Newport, Christiana bridge, Red-Lion b (9)

3 N. Castle to Christiana bridge (5)

4 Breadth of the said highways (Roads and Bridges 1)

5 Review (1—4)

(a) By Act of the General Assembly of January 29, 1791, reciting that this road had been represented "as destructive to the regularity of the streets and squares of the borough of Wilmington," &c. Thomas Evans, Matthew Aiken, Robert Wallace, George Gillespie junior, and Jacob Feariss are appointed commissioners and they or a majority of them authorized to view the said road from Brandywine creek to the intersection of High street near Christiana ferry and determine what part thereof, if any, should be vacated, and what other road substituted, &c. and make return to the clerk of the Court of Quarter Sessions, who should record the same: and it is provided, that such parts of said road, as should thus be directed to be vacated might be shut up, after any new road, which might be directed by them to be laid out in lieu of the parts vacated, should be opened, &c.



6 Return to  
Supreme Ct.

ing out the same: *And* the persons herein named or any three of them shall make a return thereof to the Justices of the next Supreme Court to be held at New-Castle for the county of New-Castle aforesaid, describing the said roads in writing under their hands, with courses and distances with a fair map or plat of the same.

7 Confirmat'n

Sect. 3. The map of the aforesaid roads and the return thereof made by three of the persons named in the said law into the office of the clerk of the peace for the said county shall by the said clerk be delivered to the Justices of the Supreme Court aforesaid at the time aforesaid; *And* the same Justices shall and may then and there take both the aforesaid returns into their consideration and establish, ratify and confirm either of them or such parts of both of them, as will make a complete road or roads through the said county in such manner and form, as to them shall seem best, and shall order the same to be entered upon the records of the same court without delay, describing by course and distance the roads so established and confirmed, and shall cause the maps and returns aforesaid or one of them to be (b) altered agreeable to the opinion and judgment of the same court, and filed with the clerk thereof: *And* the same roads so established and recorded shall from thenceforth be deemed, taken and allowed to be King's roads.

6 (9)

8 the roads to  
be King's  
roads

Passed March 31, 1764.

1769

**A FURTHER ADDITIONAL SUPPLEMENTARY ACT to the Act, intituled, An Act for the better regulation of the roads in New-Castle county.**

Whereas part of the King's road laid out and confirmed by the Justices of the Supreme Court for this government, beginning at the bridge erected over Whiteclay creek, near Finney-terre, in Whiteclay creek hundred in the county of New-Castle; to Christiana bridge, in the same hundred, hath been found to be upon bad ground, and likely to prove very expensive to the inhabitants of the said hundred to make, and keep in good order and repair. *And whereas* there is ground very suitable for a road within a few perches of place where the present road is established :—

9 From White  
clay creek  
bridge to  
Christiana  
bridge

Section 2. The King's road from the bridge over Whiteclay creek aforesaid to the bridge over Christiana creek shall be opened and is hereby declared to be laid out, established and confirmed upon the courses and distances following; *That is to say*, Beginning at Whiteclay creek bridge aforesaid and running from thence south eleven degrees east one hundred and fifty-seven perches, thence south seventeen degrees west four hundred and thirty-five perches, 'till it intersects the King's road aforesaid as heretofore confirmed and now opened, then along the said confirmed road south eight and a half degrees west three hundred and twenty perches to the meeting-house on the hill above the village of Christiana bridge, then along the same confirmed road south twenty-five and one quarter degrees east thirty-six perches, then south fifty degrees east thirty-three perches to the bridge over Christiana creek aforesaid.

Sect. 3. That part of the King's road leading from the said Whiteclay creek bridge to Christiana bridge aforesaid, as heretofore laid out and confirmed and hereby altered, shall be null and void, any law of this government to the contrary in any wise notwithstanding.

Passed June 16, 1769.

AN ACT to provide for the opening and improving a road from Christiana bridge to the line between this State and the State of Maryland, where a road leading from Peach Bottom Ferry and Bald Friar Ferry intersects the said line. 1793

Whereas pursuant to an Act of the State of Pennsylvania, a road hath been laid out, beginning at the river Susquehanna at or near the Ferry commonly called and known by the name of Peach Bottom Ferry, and running towards such part of the navigable water of Christiana creek in the State of Delaware, until it intersects the line of the State of Maryland. And whereas the owners of the land, over which the aforesaid road will run, continuing the same from the Pennsylvania line through part of the State of Maryland three miles and forty-four perches, until it intersects the Bald Friar road at or near the west side of Big Elk, have signed an agreement for the purpose of opening the same road as aforesaid. And whereas the aforesaid road called the Bald Friar road from the west side of Big Elk where it is intersected by the Peach Bottom Ferry road aforesaid, running from thence to the line of the State of Delaware, about thirty perches northward of the place where the Nottingham road leading from Christiana bridge through Newark crosses the said line, hath been laid out pursuant to an Act of the State of Maryland. And whereas the road at present used leading from the intersection of the aforesaid Bald Friar Ferry road with the Delaware line aforesaid to Christiana bridge aforesaid, does not run in a direct course nor on good ground, and it would be conducive to the convenience and ease of the transportation of the produce of the country generally and be co-operating with the plans of the States of Pennsylvania and Maryland for straightening of the roads from Peach Bottom Ferry and Bald Friar Ferry to the navigable water of Christiana creek in the State of Delaware, to lay out a good and convenient road for the purpose aforesaid:--

Section 1. Jacob Broom, William Cooch, William Armor, James M'Cullough and Peter Williams be and they are hereby appointed commissioners and they or a majority of them are hereby authorized and required to view and lay out a road beginning at the Maryland line, where the road leading from Peach Bottom Ferry and Bald Friar Ferry intersects the same, and running the most direct course consistent with the most level and otherwise eligible ground to the intersection of a road called the Nottingham road and the New London road, in the village of Newark, and from thence to Christiana bridge, as in the opinion of the said commissioners or a majority of them shall be most conducive to the convenience and ease of the transportation of the produce of the country generally, and in such manner, as they shall judge to

10 From Peach bottom ferry road to Newark

11 Authority to lay out road.

12 its location

12 return to Supreme Ct. be most advantageous to the public and least injurious to any person or persons whatsoever, and to employ such surveyor or surveyors, laborers and workmen, as they shall think necessary, in platting and laying out the same; and the said commissioners or any three of them shall make a return thereof to the Justices of the Supreme Court to be held at New-Castle for the county of New-Castle aforesaid, describing the said road in writing, under their hands, with courses and distances, with a fair map or plan of the same.

13 Confirmation (7) Sect. 2. The Justices of the Supreme Court shall and they are hereby required to receive the return of the commissioners and take the same into their consideration, to exercise the same power, and to proceed in like manner, as is directed by an Act intituled, *A supplementary Act for the amendment of an Act of the General Assembly of this government, intituled, An Act for the better regulation of the roads in New-Castle county.*

14 State road Sect. 3. The same road when so established and recorded shall from thenceforth be deemed, taken and allowed to be a State road.

15 Present road vacated Sect. 7. The road now leading from Christiana bridge to New-ark and from thence to the State line shall after the said new road is laid out and made proper for the transportation of grain and other burthens be no longer supported as heretofore by the said hundred.

Passed February 2, 1793.

1856 A SUPPLEMENT to the Act entitled "*An Act authorizing certain commissioners therein named to view the road leading over Appoquinimink bridge and causeway, and to alter and change the same.*"

186 Over Appoquinimink bridge, &c. Whereas it hath been represented to this General Assembly, that the road proposed to be established by the return of the commissioners appointed by the Act entitled "*An Act authorizing certain commissioners therein named to view the road leading over Appoquinimink bridge, and causeway, and to alter and change the same,*" will if finally established be of great injury to private property through which the same will run, and be of considerable disadvantage to the public; therefore—

17 Review Section 1. On application to the Judges of the Court of General Quarter Sessions of the Peace for the county of New-Castle by any person or persons, the said Judges are hereby empowered and required to nominate and appoint five good and substantial freeholders to review the said road proposed by the commissioners aforesaid and to ascertain and determine whether the same shall be finally confirmed and established; and if the said freeholders or a majority of them upon reviewing the premises shall not think, that the same ought to be finally confirmed and established, then they or a majority of them are hereby authorized and empowered to make such alterations and changes in the road leading from Drawyer's bridge to Blackbird over Appoquinimink bridge and causeway and to ascertain and determine where a new bridge and causeway shall be erected, as they may think proper and necessary, so as to be most advantageous to the public and least injurious to individuals, and to employ such surveyor or sur-

veyors, laborers and workmen, as they shall think necessary, in plotting and laying out the same; and the said freeholders or a majority of them shall make a return of their proceedings into the office of the clerk of the peace for the county of New-Castle, describing the said road in writing under their hands with courses and distances, and the place where the said public bridge shall be erected as aforesaid, with a fair map or plan thereof; which said return when received and confirmed the said clerk shall enter on record in his office without delay; and the same shall from thenceforth be deemed, taken and allowed to be a State road; and the proceedings of the said freeholders shall be final and conclusive.

Sect. 3. After the said road, so to be laid out, shall be opened and put in good order, that part of the present road, in lieu of which the said road shall be so laid out by the said commissioners, shall be vacated.

Sect. 4. The Levy Court of the county of New-Castle, at their meeting next after the laying out of the said road or as soon thereafter as may be, shall provide for the making and erecting without delay a good and sufficient bridge over Appoquinimink creek aforesaid, at the place designated by the freeholders in their return, which shall be deemed to be a public bridge and shall be of the same breadth and sufficiently railed in as other public bridges within the same county are directed to be by the laws of this State, and in like manner shall be afterwards supported and maintained and the expenses thereof shall be raised as other county rates and levies are by law: *Provided nevertheless*, That if the said commissioners shall deem it necessary, the bridge so to be made and erected shall be constructed with a draw of sufficient width for the free passage of all vessels.

Sect. 5. If the said freeholders or a majority of them be of opinion upon the said review, that it will be best and most to the public advantage that the old road should remain as it now runs over the present bridge and causeway, they are also hereby required to make return thereof to the office of the said clerk, which said return the said clerk shall enter on record in his said office without delay; and the same road shall afterwards be repaired and supported in the same manner as other State roads within the said county of New-Castle are by the laws of this State; and the said bridge shall also be deemed and taken to be a public bridge free from toll, and shall be repaired and supported, as other public bridges within the said county are by the laws of this State.

*Passed at Dover, Jan. 31, 1806.*

**AN ACT** to enable the owners and possessors of the marsh, cripple and low grounds lying upon Blackbird creek in New-Castle county, to bank and drain the same.

Section 20. The commissioners aforesaid or a majority of them shall have power and they are hereby authorized and required to lay off and set apart for public purposes two acres of marsh on each side of Blackbird creek aforesaid at and adjoining to the dam, which shall be made across said creek, and to lay out a public

18 return

19 confirmed

20 Old road to be vacated

21 Levy Ct. to provide a bridge

22 draw

23 Old road may be established

24 bridge to be free

1822

25 Land for public purposes mouth of Black-bird creek

road through the fast land and marsh upon each side of the said creek from the present roads to the said dam; and all persons shall have the liberty to cross the said bank with lumber, grain, cord-wood and other commodities for the purpose of putting it on board any boat or vessel; and the said commissioners or a majority of them shall assess the damages of all persons by occasion of the setting apart of such marsh and the opening of said roads, and shall return their proceedings in the premises to the Court of General Quarter Sessions of the Peace and Gaol Delivery within New-Castle county aforesaid; and if the same shall be approved by the said court, the said marsh so set apart and the said roads so laid out shall, upon the damages assessed being paid or tendered, become and be public highways free to all persons; and if the said court shall set aside said proceedings, it shall appoint other three commissioners to lay out said roads and set apart said marsh; and said roads shall be made and opened, as other public highways.

26 roads, pub-  
lic privileges

27 return to  
Court Pleas  
New-Castle

*Passed February, 1822.*

## II.

[Roads vacated in New-Castle county, by Acts of the General Assembly.

1796  
Post  
2 K

By Act of February 8, 1796, such part of the Kennet road as extended from Market street to Orange street in the borough of Wilmington, was vacated.

1801

By Act of January 29, 1801, so much of the road leading from Ellis' tavern in Cecil county, Maryland, to the Buck tavern in New-Castle county, as crosses the land of James A. Bayard, and runs from the road, leading from Bohemia ferry to the Buck tavern, to the road which runs from Ellis's tavern to Elkton—was vacated; and it was made lawful for the said James A. Bayard, his heirs and assigns to enclose said road.

1814

By Act of February 1, 1814, such part of the old Kennet road, as left the Wilmington and Kennet turnpike road, at or near the house of James Hill, passing by lands of James Tilton, Thomas Braden, James Brindley and others and united with said turnpike at or near the Buck tavern, was vacated.

1815

By Act of January 20, 1815, the old road lying between the village of Glasgow in the hundred of Pencader and the line of the State of Maryland intersecting said road on the farm of Oliver R. Howell, theretofore used as a public road between New-Castle and Frenchtown—(the same being unnecessary in consequence of the artificial road from New-Castle to Frenchtown)—was vacated.

1818

By Act of January 15, 1818, so much of the old road from the village of Christiana in this State to Elkton in Maryland, lying between said village of Christiana and the Maryland line as had been supplied by the artificial road made by the Elkton and Christiana turnpike company, was vacated.

1818

By Act of 27, January 1818 such part of the Kennet road in the borough of Wilmington as extended from Orange street westwardly to Chesnut street was vacated.

1820

By Act of 10 February 1820 the old road lying in Brandywine

hundred on the south side of William Young's manufactory, between the points of intersection of the road leading to the Wilmington and Great Valley turnpike to the point where it intersects the road leading to the Kennet turnpike, also that part of a new road laid out, tho not opened, leading to the bridge at said Mills south fifty degrees and one half west about fourteen perches from its intersection with the old road aforesaid, were vacated.—Provided the commissioners of roads for Brandywine hundred for the time being or a majority of them should approve of and allow the said roads to be vacated,—otherwise this Act to be void.

By Act of February 2, 1821, the road theretofore laid out thro the escheated land at Cantwell's Bridge, is vacated.

1821

By the first section of the Act of February 4, 1822, such part of the road from Milltown to Wilmington, as lies between the Newport and Gap turnpike road and Phillips' factory and passing by the dwelling house of David Justice in Millcreek hundred and falling into the road leading from the said turnpike to the said factory, was vacated.—Provided, that if at any time the managers and company of the Gap and Newport turnpike company should erect a toll gate on said turnpike between the junction of said vacated road and the road from the turnpike to the aforesaid Phillips' factory, or in any other way stop the free passing and repassing of travellers on said turnpike, then the said section should be void, and provided further, that the commissioners of roads for Millcreek hundred for the time being or a majority of them should approve of and allow the said road to be vacated as aforesaid, or otherwise the said Act to be void and of no effect.

1822

By Act of February 8, 1822, such part of the old Concord road, as is situate between the lands then belonging to Francis Jeandelle and Joseph W. Day and was occupied as a turnpike by the Wilmington and Great Valley turnpike company, was vacated; provided the commissioners of roads for Brandywine hundred for the time being or a majority of them should approve of and allow the said road to be vacated, otherwise this Act to be void and of no effect.]

1822

—0—

## ROADS IN KENT COUNTY.

## I.

AN ACT *for the better regulation of the roads in the county of Kent.*

1796

Section 1. The following roads in the said county of Kent shall be laid out and straightened, *to wit*; the road running from the line dividing New-Castle county from Kent, through Duck creek cross roads, Dover, and Frederica to Milford; the road from Passey one mile below Dover, to begin above or below Punchoon run, as may be thought best by the commissioners, running through Camden and Canterbury and by Richard Dalliner's to the line dividing Sussex and Kent; the road leading from the line dividing

1 Laid out &  
straightened  
(5, 6)

road through the fast land and marsh upon each side of the said creek from the present roads to the said dam; and all persons shall have the liberty to cross the said bank with lumber, grain, cordwood and other commodities for the purpose of putting it on board any boat or vessel; and the said commissioners or a majority of them shall assess the damages of all persons by occasion of the setting apart of such marsh and the opening of said roads, and shall return their proceedings in the premises to the Court of General Quarter Sessions of the Peace and Gaol Delivery within New-Castle county aforesaid; and if the same shall be approved by the said court, the said marsh so set apart and the said roads so laid out shall, upon the damages assessed being paid or tendered, become and be public highways free to all persons; and if the said court shall set aside said proceedings, it shall appoint other three commissioners to lay out said roads and set apart said marsh; and said roads shall be made and opened, as other public highways.

*Passed February, 1822.*

## II.

[Roads vacated in New-Castle county, by Acts of the General Assembly.

1796  
Post  
2 K

By Act of February 8, 1796, such part of the Kennet road as extended from Market street to Orange street in the borough of Wilmington, was vacated.

1801

By Act of January 29, 1801, so much of the road leading from Ellis' tavern in Cecil county, Maryland, to the Buck tavern in New-Castle county, as crosses the land of James A. Bayard, and runs from the road, leading from Bohemia ferry to the Buck tavern, to the road which runs from Ellis's tavern to Elkton—was vacated; and it was made lawful for the said James A. Bayard, his heirs and assigns to enclose said road.

1814

By Act of February 1, 1814, such part of the old Kennet road, as left the Wilmington and Kennet turnpike road, at or near the house of James Hill, passing by lands of James Tilton, Thomas Braden, James Brindley and others and united with said turnpike at or near the Buck tavern, was vacated.

1815

By Act of January 20, 1815, the old road lying between the village of Glasgow in the hundred of Pencader and the line of the State of Maryland intersecting said road on the farm of Oliver R. Howell, theretofore used as a public road between New-Castle and Frenchtown—(the same being unnecessary in consequence of the artificial road from New-Castle to Frenchtown)—was vacated.

1818

By Act of January 15, 1818, so much of the old road from the village of Christiana in this State to Elkton in Maryland, lying between said village of Christiana and the Maryland line as had been supplied by the artificial road made by the Elkton and Christiana turnpike company, was vacated.

1818

By Act of 27, January 1818 such part of the Kennet road in the borough of Wilmington as extended from Orange street westwardly to Chesnut street was vacated.

1820

By Act of 10 February 1820 the old road lying in Brandywine

hundred on the south side of William Young's manufactory, between the points of intersection of the road leading to the Wilmington and Great Valley turnpike to the point where it intersects the road leading to the Kennet turnpike, also that part of a new road laid out, tho not opened, leading to the bridge at said Mills south fifty degrees and one half west about fourteen perches from its intersection with the old road aforesaid, were vacated—Provided the commissioners of roads for Brandywine hundred for the time being or a majority of them should approve of and allow the said roads to be vacated,—otherwise this Act to be void.

By Act of February 2, 1821, the road theretofore laid out thro the escheated land at Cantwell's Bridge, is vacated.

1821

By the first section of the Act of February 4, 1822, such part of the road from Milltown to Wilmington, as lies between the Newport and Gap turnpike road and Philips' factory and passing by the dwelling house of David Justice in Millcreek hundred and falling into the road leading from the said turnpike to the said factory, was vacated—Provided, that if at any time the managers and company of the Gap and Newport turnpike company should erect a toll gate on said turnpike between the junction of said vacated road and the road from the turnpike to the aforesaid Philips' factory, or in any other way stop the free passing and repassing of travellers on said turnpike, then the said section should be void, and provided further, that the commissioners of roads for Millcreek hundred for the time being or a majority of them should approve of and allow the said road to be vacated as aforesaid, or otherwise the said Act to be void and of no effect.

1822

By Act of February 8, 1822, such part of the old Concord road, as is situate between the lands then belonging to Francis Jeandelle and Joseph W. Day and was occupied as a turnpike by the Wilmington and Great Valley turnpike company, was vacated; provided the commissioners of roads for Brandywine hundred for the time being or a majority of them should approve of and allow the said road to be vacated, otherwise this Act to be void and of no effect.]

1822

## ROADS IN KENT COUNTY.

### I.

AN ACT for the better regulation of the roads in the county of Kent.

1796

Section 1. The following roads in the said county of Kent shall be laid out and straightened, to wit; the road running from the line dividing New-Castle county from Kent, through Duck creek cross roads, Dover, and Frederica to Milford; the road from Passey one mile below Dover, to begin above or below Puncheon run, as may be thought best by the commissioners, running through Camden and Canterbury and by Richard Dalliner's to the line dividing Sussex and Kent; the road leading from the line dividing

1 Laid out &  
straightened  
(5, 6)



- this State from Maryland, by Blackiston's chapel, through Duck-creek Cross roads to (a) Holliday's landing; the road leading from the last mentioned line by James Scotten's through Lewis's Cross roads to Duckcreek Cross roads; the road running from the last mentioned line near the Cypress Branch through Lewis's Cross roads and by Peter Miller's mill to Dover; the road leading from the Horse-head over Carbine's bridge to the Fast landing; the road running from the Fast landing by John Hamm's to Dover; the road leading from Little-creek landing to Dover; the road leading from the said line of Maryland near Samuel Milbourne's by the Horse-head to Dover; the road leading from the last mentioned line near the River bridges by Thomas's chapel through the White-oak swamp to Dover; the road running from the said line by Thomas's chapel through Camden to the Forest landing; the road running from the said line near Furtad's mill to Camden; the road running from the said line near Samuel Willoughby's to Camden; the road running from the said line at or near Whiteleysburgh through Berrytown to Frederica; the road running from Berry-town to intersect the upper State road at or near Bedwell Maxwell's; the road running from the said line over Vincent's causeway by Stephen Lewis's to Milford; the road running from the said line through land late of Jonathan Emerson deceased by Waitman Booth's to Milford; the road running from the said line across Gum Island by Major Anderson's to Milford; the road running from the said line by Marshy Hope bridge to Milford; the road from Marshy Hope bridge near Punch Hall to Whiteleysburgh; the road from Marshy Hope bridge to intersect to upper State road near Jacob Biddle's.
- [27] this State from Maryland, by Blackiston's chapel, through Duck-creek Cross roads to (a) Holliday's landing; the road leading from the last mentioned line by James Scotten's through Lewis's Cross roads to Duckcreek Cross roads; the road running from the last mentioned line near the Cypress Branch through Lewis's Cross roads and by Peter Miller's mill to Dover; the road leading from the Horse-head over Carbine's bridge to the Fast landing; the road running from the Fast landing by John Hamm's to Dover; the road leading from Little-creek landing to Dover; the road leading from the said line of Maryland near Samuel Milbourne's by the Horse-head to Dover; the road leading from the last mentioned line near the River bridges by Thomas's chapel through the White-oak swamp to Dover; the road running from the said line by Thomas's chapel through Camden to the Forest landing; the road running from the said line near Furtad's mill to Camden; the road running from the said line near Samuel Willoughby's to Camden; the road running from the said line at or near Whiteleysburgh through Berrytown to Frederica; the road running from Berry-town to intersect the upper State road at or near Bedwell Maxwell's; the road running from the said line over Vincent's causeway by Stephen Lewis's to Milford; the road running from the said line through land late of Jonathan Emerson deceased by Waitman Booth's to Milford; the road running from the said line across Gum Island by Major Anderson's to Milford; the road running from the said line by Marshy Hope bridge to Milford; the road from Marshy Hope bridge near Punch Hall to Whiteleysburgh; the road from Marshy Hope bridge to intersect to upper State road near Jacob Biddle's.
- [12] Sect. 2. The said roads shall be of the breadth of forty feet, thirty feet whereof shall be grubbed and cleared; and after the said roads shall be laid out as aforesaid the persons hereinafter appointed or a majority of them, in the several hundreds respectively, shall make a return thereof into the office of the clerk of the peace for the said county of Kent with a fair map or plot of the same and the several courses and distances of the said roads; which shall be entered on record in the said office; and from thenceforth the said roads shall be deemed and taken to be the State roads.
- [30] *Passed February 9, 1796.*
- [14] (a) By an additional supplement of January 22, 1817, to this Act, it is recited, that in the return of the road laid out under this Act and the supplement of Jan. 20, 1797, from Holliday's landing thro' Smyrna to Jim-town, some mistake had been made and the overseers were unable to lay it out, and great inconvenience had been experienced by the public from the narrowness of the road in certain parts of it near Smyrna; and it is enacted, that Thomas Rothwell, John Raymond and Timothy Cummins should be commissioners to correct any errors that had been made in the original location of said road, or if they deemed it necessary to lay it out anew; and that they or a majority of them should make return thereof into the office of the clerk of the peace of Kent county with a fair map or plot of the same, which should be entered of record in said office and be final; that said road should be of the breadth of forty feet, thirty feet whereof should be grubbed and cleared; and that the same should be deemed a State road. And by a further supplement of 3 February, 1818, Henry M. Ridgely, Jacob Stout and John Moody were appointed commissioners to examine said road from Holliday's landing through Smyrna to Jim-town and make any alteration in said road as laid out by the commissioners above named; and if they or a majority of them should think fit to make any such alteration, they should make return thereof into the office of the clerk of the peace for Kent county with a fair map or plot of the same to be entered of record in said office; the said road to be of the width of forty feet; said return to be made within one year after the passing of said Act.
- [25, 26] 3 returns recorded
- [7] 4 State roads
- [29] [13]
- [28] 2 Breadth

(a) By an additional supplement of January 22, 1817, to this Act, it is recited, that in the return of the road laid out under this Act and the supplement of Jan. 20, 1797, from Holliday's landing thro' Smyrna to Jim-town, some mistake had been made and the overseers were unable to lay it out, and great inconvenience had been experienced by the public from the narrowness of the road in certain parts of it near Smyrna; and it is enacted, that Thomas Rothwell, John Raymond and Timothy Cummins should be commissioners to correct any errors that had been made in the original location of said road, or if they deemed it necessary to lay it out anew; and that they or a majority of them should make return thereof into the office of the clerk of the peace of Kent county with a fair map or plot of the same, which should be entered of record in said office and be final; that said road should be of the breadth of forty feet, thirty feet whereof should be grubbed and cleared; and that the same should be deemed a State road. And by a further supplement of 3 February, 1818, Henry M. Ridgely, Jacob Stout and John Moody were appointed commissioners to examine said road from Holliday's landing through Smyrna to Jim-town and make any alteration in said road as laid out by the commissioners above named; and if they or a majority of them should think fit to make any such alteration, they should make return thereof into the office of the clerk of the peace for Kent county with a fair map or plot of the same to be entered of record in said office; the said road to be of the width of forty feet; said return to be made within one year after the passing of said Act.

**A SUPPLEMENT to the Act, entitled, "An Act for the better regulation of the roads in the county of Kent."** 1797

Whereas the duties required of the commissioners of the roads in some of the hundreds of Kent county have not been performed agreeably to the directions of the act of the General Assembly entitled "An Act for the better regulation of the roads in the county of Kent." 5 Preceding Act not fully executed

Section 1. William Denny, John Cowgill, and Daniel David commissioners for Duck creek hundred, and Jonathan Needham, Clayton Cowgill and Thomas Lamb commissioners for Little creek and Dover hundreds, and the commissioners of the roads named in the said Act, and appointed by the Levy Court and Court of Appeal for Murderkill hundred, shall forthwith proceed to perform the duties required of the commissioners of the roads for the several hundreds aforesaid agreeably to the true intent and meaning of this Act and of the said Act of Assembly to which this is a supplement, who shall have as full and ample powers to lay out, and do and perform every act and service required of the commissioners of the roads in the several hundreds in Kent county, and to be compensated in the same manner as the commissioners named in this Act, to which this is a supplement, had and shall be liable to the pains and penalties prescribed in the said Act for neglecting or refusing to perform the same. 6 Commiss'rs

Sect. 2. And whereas it has been represented to this General Assembly, that the commissioners of the roads of Mispillion hundred have reviewed the roads in the said hundred and laid the same out as required by the said Act of the General Assembly, and that many of the citizens in that hundred are much dissatisfied with the proceedings of the said commissioners: Richard Dalliner, William Burrowes and Isaac Jones are hereby authorized, empowered and required to review the roads laid out by the commissioners aforesaid in Mispillion hundred and lay out the same through the said hundred, touching at the several places in the said hundred named in the said Act in such manner, as shall be advantageous to the public and least injurious to individuals without favor or respect to any person or persons whatsoever, and to employ such surveyor or surveyors, laborers and workmen, as they think necessary in plotting and laying out the same; and the persons herein last named or any two of them shall make a return thereof to the Judges of the Court of Common Pleas at the next court to be held at Dover for the county aforesaid, describing the said roads in writing under their hands with courses and distances, with a fair map or plot of the same. 7 Review in Mispillion hundred

Sect. 3. The clerk of the peace for the said county of Kent shall at the next Court of General Quarter Sessions of the Peace and Gaol Delivery to be holden at Dover as aforesaid deliver to the Judges of the said court the map or plot, which hath already been or may be made by the commissioners of the roads for Mispillion hundred named in the said Act, to which this is a supplement; and the said Judges shall and may then and there take both of the aforesaid returns into their consideration, and establish, ratify and confirm either of them or such parts of both of them, as will make 8 & return to Com. Pleas 9 Maps to be laid before the court 10 confirmation

complete roads through the said hundred in such manner and form as to them shall seem best ; and shall cause the maps and returns aforesaid, or one of them to be altered, and the courses and distances of the roads so established and confirmed to be described agreeably to the opinion and judgment of the said court ; and the map of the said roads so confirmed and established shall be then delivered to the clerk of the peace for the said county of Kent, which shall be entered on record in his office together with the returns, maps and plots of the roads laid out by the commissioners in the other hundreds of the said county : And the commissioners and reviewers in the several hundreds aforesaid are hereby enjoined to regard the convenience of individuals as much, as, the nature of the case and the public advantage will admit.

12 Road from Little-creek to Dover Sect. 4. It shall and may be lawful for the commissioners of the roads for Little creek and Dover hundreds to lay the road leading from Little creek to Dover, so as to avoid and not touch at the place where the landing upon the said creek is now situate ; but to continue the road leading from the Fast Landing, from the place where the road leading from Dover shall intersect it, until the said Fast Landing road shall reach Little creek, if it shall appear expedient and of public advantage so to lay out said road.

13 State roads Sect. 5. The roads so recorded, established, ratified and confirmed as aforesaid shall from thenceforth be deemed and taken to be the State roads.

14 Road from Berry town continued Sect. 16. The commissioners of the roads for Murderkill hundred are hereby authorized and required, in laying out the road from Berry-town to Bedwell Maxwell's, to continue the said road to Joseph Baker's landing in such manner, as they may think best for the public interest and with the least damage to the owners of the lands, throughout which the same may run.

Passed January 20, 1797.

1825 *AN ACT to straighten and improve the roads from the banked marshes on Simon's creek in Kent county, to the village of Seaford in Sussex county.*

15 Simon's creek to Seaford Section 1. When the Governor of this State shall be informed that the stock in the Philadelphia, Dover and Norfolk steam boat and transportation company shall have been subscribed, he is authorized and empowered to appoint five disinterested commissioners, who or a majority of them shall have full power and are hereby authorized to view the roads and country from a suitable place or point on the banked marsh near Simon's creek in Kent county to the village of Seaford in Sussex county, beginning at such place or point as shall be deemed most suitable and proceeding to the village of Seaford in Sussex county aforesaid, to lay out and establish such road or roads from and to such points and in such place and places, as they or a majority of them shall deem most expedient, for the purpose either of shortening the distance, or for placing the road or roads on better ground, or for opening the most direct and eligible route from such banked marsh on Simon's creek to the village of Seaford aforesaid : And the said

commissioners or a majority of them shall assess the compensation of any person or persons, who shall sustain damages from laying out and making any road or roads which shall be so laid out, and shall cause a map of the route from the banked marsh aforesaid to be made, and shall therein lay down and set forth all the road or roads which shall be laid out as aforesaid, so that it shall be seen what is new road and what is old road, and shall make a certificate under hand of their proceedings in the premises and deliver the same with the map aforesaid to the Recorder of deeds in and for Kent county and to the Recorder of deeds in and for Sussex county, who shall respectively record the same certificate and map in their respective offices for the recording of deeds in said counties : and either of said records or a certified copy thereof shall be competent evidence : and the proceedings of the said commissioners or a majority of them in the premises shall be conclusive ; and after such certificate and map shall be recorded as aforesaid, and compensation assessed shall be paid or tendered, the road or roads, which the said commissioners or a majority of them shall lay out as aforesaid, shall be public roads or common highways, and may be opened and made by any person or persons ; and any person or persons, who shall obstruct any such road or roads or commit any nuisance therein, shall be liable to be indicted in the Court of General Quarter Sessions of the Peace and Gaol Delivery in either Kent or Sussex county, and shall on conviction incur the same penalty and suffer the same punishment, which by law is or at the time shall be provided against nuisances in any public road or common highway.

Sect. 2. The road or roads to be laid out as aforesaid shall be of the breadth of forty feet.

Sect. 3. The commissioners aforesaid or a majority of them may appoint a surveyor to assist them in the premises ; and said commissioners and such surveyor shall before acting be sworn or affirmed before some Judge or Justice of the Peace, to perform all the duties incumbent on them respectively by virtue of this Act, with diligence, impartiality and according to the best of their respective skill and judgment.

Sect. 5. All expense incident to or in any way arising from the laying out and opening the road or roads aforesaid as well as all sums of money, which may be awarded as damages by the commissioners aforesaid, shall be paid and satisfied by " the Philadelphia, Dover and Norfolk steam boat and transportation company ; " and until all such expense, damages and costs aforesaid shall be fully discharged or tendered as aforesaid, the road or roads laid out or opened in pursuance of this Act shall not be deemed or taken to be a public highway or highways.

*Passed at Dover, February 9, 1825.*

11 recorded complete roads through the said hundred in such manner and form as to them shall seem best ; and shall cause the maps and returns aforesaid, or one of them to be altered, and the courses and distances of the roads so established and confirmed to be described agreeably to the opinion and judgment of the said court ; and the map of the said roads so confirmed and established shall be then delivered to the clerk of the peace for the said county of Kent, which shall be entered on record in his office together with the returns, maps and plots of the roads laid out by the commissioners in the other hundreds of the said county : And the commissioners and reviewers in the several hundreds aforesaid are hereby enjoined to regard the convenience of individuals as much, as the nature of the case and the public advantage will admit.

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commissioners or a majority of them shall assess the compensation of any person or persons, who shall sustain damages from laying out and making any road or roads which shall be so laid out, and shall cause a map of the route from the banked marsh aforesaid to be made, and shall therein lay down and set forth all the road or roads which shall be laid out as aforesaid, so that it shall be seen what is new road and what is old road, and shall make a certificate under hand of their proceedings in the premises and deliver the same with the map aforesaid to the Recorder of deeds in and for Kent county and to the Recorder of deeds in and for Sussex county, who shall respectively record the same certificate and map in their respective offices for the recording of deeds in said counties: and either of said records or a certified copy thereof shall be competent evidence: and the proceedings of the said commissioners or a majority of them in the premises shall be conclusive; and after such certificate and map shall be recorded as aforesaid, and compensation assessed shall be paid or tendered, the road or roads, which the said commissioners or a majority of them shall lay out as aforesaid, shall be public roads or common highways, and may be opened and made by any person or persons; and any person or persons, who shall obstruct any such road or roads or commit any nuisance therein, shall be liable to be indicted in the Court of General Quarter Sessions of the Peace and Gaol Delivery in either Kent or Sussex county, and shall on conviction incur the same penalty and suffer the same punishment, which by law is or at the time shall be provided against nuisances in any public road or common highway.

Sect. 2. The road or roads to be laid out as aforesaid shall be of the breadth of forty feet.

Sect. 3. The commissioners aforesaid or a majority of them may appoint a surveyor to assist them in the premises; and said commissioners and such surveyor shall before acting be sworn or affirmed before some Judge or Justice of the Peace, to perform all the duties incumbent on them respectively by virtue of this Act, with diligence, impartiality and according to the best of their respective skill and judgment.

Sect. 5. All expense incident to or in any way arising from the laying out and opening the road or roads aforesaid as well as all sums of money, which may be awarded as damages by the commissioners aforesaid, shall be paid and satisfied by "the Philadelphia, Dover and Norfolk steam boat and transportation company;" and until all such expense, damages and costs aforesaid shall be fully discharged or tendered as aforesaid, the road or roads laid out or opened in pursuance of this Act shall not be deemed or taken to be a public highway or highways.

*Passed at Dover, February 9, 1825.*

1825 AN ACT to authorize John Bowers, his heirs, executors administrators or assigns to erect a toll-gate across the public road running to Bowers's Beach or Mulberry point on Delaware Bay, and for other purposes.

John Bowers' toll gate [By section 1, 2, 3, John Bowers, his heirs, executors, administrators or assigns are authorized to erect a gate across the road running to the Delaware bay through his land, at such place as he should choose, not further from the bay than the bridge over a ditch passing thro said road from Murderkill creek to St. Jones' creek—said gate to be a toll-gate, while he, his heirs, executors, administrators or assigns should at his or their own cost keep the said ditch properly cleaned and said bridge in good repair; and he, his heirs, or assigns or their agent are authorized to take toll as follows; for a single horse with or without a rider, four cents; for every horse and chaise, sulky or chair ten cents; for every four wheels riding carriage drawn by two horses twenty cents, for every cart, wagon or carriage (other than carriages for riding) drawn by mules, horses or oxen, the rate of two cents for every mule, horse or ox, and the same rate for every mule or ox whether attached to any cart, wagon or carriage or not—which rates shall be taken for passing through said gate toward the bay; but nothing shall be taken for their repassing on their return home, and no foot passenger shall be subjected to toll for passing and repassing said gate.]

Penalties Sect. 4. If any person or persons shall pass through the said gate, with any horse, chaise, sulky, chair, cart, carriage, mule or ox, without having first paid the legal toll or having obtained leave so to do of the person entitled to receive said toll, or if any person or persons shall wilfully injure or destroy the said gate, bridge or ditch, he, she or they so offending shall for every such offence forfeit and pay any sum of money not less than five dollars and not exceeding fifty dollars, one moiety thereof to the person entitled to the toll as aforesaid at the time when the offence is committed and the other moiety to the Treasurer of Kent county for the use of the said county. And if any person having the care and keeping of said gate shall exact or demand for passing through the same more than the rates herein before specified and prescribed, or shall refuse to permit any person to pass through said gate with his, her or their carriages, carts, wagons, horses, oxen or mules, after he, she or they shall have offered to pay the toll as fixed by this Act, he, she or they so offending shall for every such offence forfeit and pay any sum not less than one dollar and not exceeding forty dollars, one moiety thereof to the person so aggrieved and the other moiety thereof to the Treasurer of Kent county aforesaid for the use of said county; and all the penalties and forfeitures incurred under the provisions of this Act, shall be recovered by indictment and conviction in the court of General Quarter Sessions of the Peace in and for Kent county aforesaid.

indictment

[By section 6, this Act is limited to March 1, 1739.]

Passed at Dover, January 26, 1825.

## II.

[Roads vacated in Kent county by Act of the General Assembly.]

[By Act of January 24, 1805, Major Anderson, his heirs or assigns were authorized to alter the road leading from Vincent's causeway, by Stephen Lewis's, to Milford:—the alteration to begin at its intersection with the road below Stephen Lewis's and running thence south eighty-seven degrees and three fourths of a degree west one hundred and twenty perches until it comes into the first aforesaid road from Vincent's causeway by Stephen Lewis's to Milford.] 25 Major Anderson's

[It was provided that said Major Anderson, his heirs or assigns at his or their own cost should lay out and make said road, as wide and good as other public roads in this State were by law required to be, and build all necessary bridges and causeways; and that he or they, as soon as the alteration was made, might shut up so much of said road from Vincent's causeway by Stephen Lewis's to Milford as ran through his land between the places of intersection.]

[By Act of February 9, 1819, the parts of the road from Milford to Punch Hall—supplied by two new roads made by Philip D. Fiddeman on his own land at his own expense, to wit; the one from the foot of the Wading place causeway to within about twenty yards of the gate leading to the mansion house on the farm of the said Philip D. Fiddeman, and the other from a point in said road from Milford to Punch Hall at the end of that part known by the name of “the straight road” to another point at the distance of about three hundred yards,—were vacated; and said new roads established as parts of said road from Milford to Punch Hall.] 26 Wading place

[By Act of January 5, 1805, Joseph Harper, John Clarke and John Miller were appointed commissioners to view the State road from the Horse-head road to Peter Miller's mill, and lay out and survey the road as then used, and cause a correct plot of the courses and distances to be made, and return the same under their hands and seals to the Court of General Quarter Sessions of the Peace for Kent county—and it was provided that the road so returned should be established as part of said State road, and that the part of said State road laid out pursuant to the Act of the 9th February 1796, lying between Peter Miller's mill and the Horse-head road, should be vacated.] 27 By Miller's mill

[By Act of January 23, 1810, James Wroten was authorized to alter the road from Marshy Hope to the State line at Punch Hall—the alteration to begin at the north-west end of the Horse-pond causeway and run thence north sixty-two and a quarter degrees west, eighty three perches till it intersects the old road near a road of Thomas Saulsberry's on the road from Marshy Hope bridge to Punch Hall—he at his proper cost to lay out and make said road of the width required by law. And he was authorized to shut up the old road beginning at the northwest end of the Horse-pond causeway on the road leading from Marshy Hope bridge to Punch Hall and to run thence north sixty-two and a quarter degrees west eighty-three perches till it intersects the old road near a line of Thomas Saulsberry's on the last mentioned road.] 28 From Marshy Hope bridge to Punch Hall

[By Act of January 27, 1815, so much of the road from the Ma-



29 Across  
Gum Island  
by Major An-  
derson's

ryland line across Gum Island by Major Anderson's to Milford as lies between the upper and lower mills of David Riggs was vacated, to be enclosed by said David Riggs as soon as he should cause to be laid out, cleared and rendered passable in as good order as the road vacated, a road forty feet wide beginning at or near the said upper mill and running thence north sixty-nine degrees east one hundred and four perches, thence north fifty-six degrees east one hundred and sixty-four perches and thence north seventy-four and a third degrees east ninety-two perches to the old road near the lower mill.]

St. Jones'  
Neck

[By Act of January 23, 1816, the old road between these points, to wit; the intersection of the road laid out from Dover through St. Jones's neck to Patten's dyke—and the road leading by Joshua Nickerson's to the Methodist meeting house—is vacated.]

30 Horsehead  
road

[By Act of 9 February, 1819, the Reverend John Durborow is authorized to alter the State road from the Maryland line near Samuel Milbourne's by the Horse-head to Dover—the alteration to begin next to Dover, in Murderkill hundred, in the middle of said road at a stone to be settled or sunk in the said road and leaving the old road to run thro lands of said Durborow south-west twenty-one perches, then south sixty eight and a half degrees west eight perches, then south eighty three degrees west fifty-seven perches to another stone to be settled or sunk in the middle of said road; which said new part of said road to be forty feet wide, thirty feet whereof should be grubbed and cleared. It is provided, that he at his own cost should settle the stones and make the road altered and put the same in good order, and then that the part of the State road aforesaid beginning at the first mentioned stone and running thence south sixty-five degrees west twelve perches and south eighty-five degrees west sixty-eight perches to the second mentioned stone, should be vacated, and that he might appropriate the same to his own use: and that the said new road should be deemed part of said State road.]

31 Levin  
Charles

[By Act of 9 February, 1820, Levin Charles was authorized to alter part of the road from Milford to the Maryland line, passing through his lands—the alteration to begin at a point, where he had begun clearing the new road, and leaving the old road and running on his land south sixty-five degrees west seventeen perches, south eighty and one half degrees west one hundred and thirty-eight perches, thence north seventy and one half degrees west three perches to said old road; the altered part to be of the same width as the old road and to be laid out and put in good order by said Levin Charles at his own cost; and it was provided that when said altered part should be so laid out and put in good order, the part of the old road beginning at the point first mentioned and running north eighty-one and a half degrees west fifty-eight perches and south sixty-nine and a half degrees west one hundred and four perches to the point where the alteration ended, should be vacated; and he might appropriate the same to his own use; and that said altered part should be taken to be part of the road aforesaid.]

32 Prospect  
Hill to Milford

[By Act of February 1821, authority was given to lay out and make a road commencing at a point easterly of Ezekiel Anderson's house on the road from Prospect Hill to Milford and running

thence south eleven degrees east one hundred and twenty perches to the said old road intersecting it near the north end of the old causeway near which Covington Messick lived—to be made of lawful breadth, cleared and good and passable at the expense of the petitioners, and when so made the road thereby supplied was vacated.]

[By Act of January 31, 1824, Purnel Johnson was authorized to vacate and stop so much of the State road from the Maryland line over Marshy Hope bridge, and through his premises to Milford, as lies between the south end of a causeway on said road about one hundred and eighty-five perches below or southward of his dwelling house and a point in said road about three and one half perches above or northward from a bridge thereon called Saw-pit bridge near the residence of Daniel Allen, being a distance of about one hundred and eighty-seven perches, as soon as he should have laid out and made at his own cost another road beginning near the south end of said causeway at or opposite the north end of a new road then lately cleared by him and running south twenty-seven degrees west one hundred and sixty perches more or less to the said point about three and half perches above said bridge.]

33 Purnel  
Johnson

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## ROADS IN KENT AND SUSSEX.

AN ACT for the better regulation of King's roads within the counties of Kent and Sussex.

1761

Section 2. The following roads within the counties of Kent and Sussex being heretofore deemed and taken to be King's roads, although no sufficient proof appears that the same were laid out by lawful authority, *to wit*: In Kent county, the roads beginning at a run near Duck-creek or Salisbury town, that divides New-Castle from Kent county, and running from thence the several courses of the said road through Dover town, until it comes to where the said road separates and divides about one mile to the southward of the said town of Dover, near to the place, where Thomas Nixon now dwells; and from thence the roads known by the name of the Drawbridge or lower and upper King's roads shall severally continue their respective courses, until they intersect each other near to a branch called the Three runs, and from thence on the several courses of the said road to the Three runs; and in Sussex county, the road beginning at the Three runs and running from thence on the several courses thereof, until it comes to the place where John Clows, jun. now dwells, and running from thence on the several courses thereof to the Court House in the town of Lewes and so along the bank of Lewestown creek to the Canary Kiln, and beginning at the said Court House and running on the several courses to a mill known by the name of Frame's saw-mill being at this time the utmost limits of the said county of Sussex next to Maryland, thence running from the said mill on the several courses to the said John Clow's where the said King's roads meet, as is herein described, shall from

From Duck-  
creek thro  
Dover—up-  
per & lower  
roads—to  
Lewes, &c

40 feet wide  
(Roads &  
Bridges 55)

henceforth be deemed, taken and allowed to be public or King's roads within the said counties.

*Passed October 31, 1761.*

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## ROADS IN SUSSEX COUNTY.

1796

### AN ACT for the better regulation of the roads in the county of Sussex.

1 Roads laid out & straightened

Section 1. The following roads in the said county of Sussex, shall be laid out and straightened, *to wit*; a road to begin at Millford bridge, and to run thence through Georgetown and Dagsborough, until it intersects the west line, that divides the said county of Sussex from the State of Maryland; a road to begin at Lewestown, and to run thence through Georgetown until it intersects the north line, that divides the county aforesaid from Maryland; and a road to begin at Georgetown, and to run thence to the west line that divides the hundred of Little-creek in the said county from Maryland.

2 Their breadth

Sect. 2. The said roads shall be of the breadth of forty feet, thirty feet thereof shall be grubbed and cleared; and after the said roads shall be laid out as aforesaid, the persons herein after appointed (a) or a majority of them, shall make a return thereof into the office of the clerk of the peace for the said county of Sussex with a fair map or plat of the same and the several courses and distances of the said roads, which shall be entered on record in the said office; and from thenceforth the said roads shall be deemed

3 recorded

4 State roads

and taken to be the State roads.

*Passed February 9, 1796.*

5 From St. John's-town to Redden's cross roads

[By Act of February 1, 1813, Samuel Laws, Joseph Vickers, Charles Polk junior, Doctor John Cary and Colonel John Wilson were appointed commissioners, with authority to them or a majority of them to lay out a State road from St. John's-town or near said town, to the State road from Millford to Georgetown at or near Redden's cross roads in Sussex county—and the Levy Court were authorized to supply any vacancy of said commissioners:—the return to be made into the office of the clerk of the peace for Sussex county and entered on record in said office; and the said road to be a State road.]

6 Changing road from Stone line to John Bradley's forge

[By Act of 28 January, 1819, Peter R. Jackson and William Meloney were authorized to make a road of lawful breadth from the west end of John Bradley's mill dam, thence north sixty-four degrees west, twenty-eight perches, north seventy-five and one half degrees west seventy-seven perches, south fifty-four and one half degrees west one hundred and fourteen perches, or until the said new road intersect the old one at or near William Meloney's gate; which said road should be deemed a State road; and after it should be completed, the said Peter R. Jackson and William Meloney

(a) Richard Hayes, Nathaniel Mitchell, Woolsey Burton, Rhoads Shaukland, Isaac Cooper, Thomas Laws and Abraham Harris junior.

were authorized to enclose the old road between said mill-dam and the place where the new road intersects the old one.]

[By Act of January 14, 1814, the Justices of the Court of Quarter Sessions of the Peace in Sussex county were required on application to direct the freeholders theretofore appointed to lay out a road from the head of Cedar creek in Cedar creek hundred to the Delaware bay to set forth with the return of said road at what place or places on said road it would be most convenient to erect a gate or gates across the same; and if said return should be approved by the court, it should be lawful to erect a gate or gates across said road at such place or places as should be designated for that purpose.]

7 Gate across road from St. of Cedar creek to bay

It is provided, that said road be deemed a public highway and that said road and gates should be kept in repair by the inhabitants of Cedar creek hundred, as other public roads in said hundred.]

AN ACT to authorize a gate to be erected across a public road therein mentioned. 1824

Section 1. It shall and may be lawful for the owners of Rum- bly marshes, in Baltimore hundred, in Sussex county, to erect a gate across the public road or common highway, leading to Fenwick's island in said hundred, and as near as may be to said marshes; and if any person or persons shall wilfully injure the said gate, or leave the same open, he, she or they so offending, shall forfeit and pay a sum of money, not exceeding five dollars to be recovered as debts under forty shillings are recoverable, by and in the name of any person or persons, who will sue for the same.

8 Gate in road to Fenwick's Island

9 injuring—penalty

*Passed at Dover, January 26, 1824.*

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### SMYRNA.

AN ACT to survey, lay out and regulate the streets of Smyrna, and for other purposes. 1817

Whereas the inhabitants of the town of Smyrna have prayed, that this General Assembly would pass a law appointing five commissioners with full power and authority to regulate the present streets, lanes and alleys within the said town, and to lay out such new ones as they should deem to be proper and necessary, and that the said street in the said town, commonly called and known by the name of the Methodist street should be comprehended within the authority of the said commissioners, and also that provision should be made in the said law for the perpetual regulation of all the streets, lanes and alleys now established or which may be hereafter laid out and established in the said town:—

Smyrna

Section 1. The bounds and limits of the town of Smyrna aforesaid shall be ascertained, fixed and established in the following manner, that is to say; the point shall be ascertained where the

1 Limits of the town

middle of the main street or road leading from Dover through Smyrna to Wilmington crosses the middle of the landing street or road leading from the Head of Chester in Maryland, through Smyrna to the landing on Duck creek: which point being ascertained, four lines shall be drawn therefrom at right angles, and each line shall extend one-quarter of a mile from the said point, running as near as may be with the four principal streets of Smyrna, as the same now run, from the said point; so nevertheless that the said lines shall be at right angles with each other, let the courses of the streets be as they may; after the said four lines are drawn as aforesaid from the aforesaid point, the limits and bounds of the said town of Smyrna shall be laid out as follows, to wit; beginning at the end of the line drawn one-quarter of a mile from the point aforesaid towards Gravelly run or Israel Peterson's mill pond, and running thence at right angles with the said last mentioned line one quarter of a mile, thence running at right angles with the line last mentioned one quarter of a mile, where it will strike the end of the quarter of a mile line drawn from the central point aforesaid towards the Head of Chester aforesaid, thence the same line continued one quarter of a mile; thence running at right angles with the line last mentioned one quarter of a mile, where it will strike the end of the quarter of a mile line drawn from the central point aforesaid towards Wilmington, thence the same line continued one quarter of a mile; thence running at right angles with the last mentioned line one quarter of a mile, where it will strike the end of the quarter of a mile line drawn from the central point aforesaid towards the landing on Duck creek, thence the same line continued one quarter of a mile, thence running at right angles with the line last mentioned one quarter of a mile to the place of beginning; so that the town of Smyrna aforesaid shall be included and comprehended within four lines running at right angles with each other as aforesaid, and each being one half mile long as aforesaid, and touching in the middle thereof the extremity of one of the quarter of a mile lines drawn from the central point as aforesaid.

2 Commiss's  
to establish  
limits & lay  
out streets  
(23)

[By sections 2 and 3 Henry M. Ridgely, Willard Hall, Jacob Stout, Jonathan Jenkins and Alexander M'Clyment, or the survivors or majority of them are authorized to ascertain and establish the limits and bounds of Smyrna in manner aforesaid and to cause the streets, lanes and alleys, and additional streets, lanes and alleys, as they may deem proper, to be surveyed, laid out and opened, and to take to their assistance a skilful surveyor and to cause to be fixed stones in such places as they shall deem proper for marking the lines, bounds, streets, lanes and alleys and to cause the surveyor to make a map of said town, on which shall be marked the boundaries of the town, and the courses, width and names of the streets lanes and alleys; with authority to annex to said map such additional lines surveys, observations and explanatory notes, as they may deem proper, and they together with the surveyor are required to sign the same when completed and cause it to be recorded in the office for recording of deeds in Kent county; and the record or any copy thereof when duly certified under the hand and seal of the Recorder is made evidence.]

3 Commiss's  
persons,  
treasurer

Sect. 5.—[By this section as amended by section 1 of the ad-

ditional supplement of 8 Feb. 1826, every free white male person Election being above the age of twenty-one years and owner of real estate within the town of Smyrna may attend at the house occupied [viz. on 29 Jan. 1817.] by Comfort Lockwood in said town or at such other convenient place as may be appointed by any commissioners of said town, on the first Monday of March in every year between the hours of ten o'clock in the forenoon and six o'clock in the afternoon, and vote by ballot for three commissioners, an assessor and a treasurer of said town, each of whom must be above the age of twenty-one years and owner of real estate within said town; immediately after the election is closed, the votes shall be read and counted; and the persons having the highest number of votes shall be elected, and continue in office for one year and until successors to them respectively are duly elected. Every election, 6 how held (after the first,) shall be held under the superintendence of three substantial freeholders to be appointed for that purpose by the commissioners; but if in any year on the first Monday of March at ten o'clock in the forenoon there shall not be present at the place of holding the election three substantial freeholders duly appointed by said commissioners and willing and ready to hold said election, in such case the persons entitled to vote in such election, present at the place of holding the same, shall immediately after ten o'clock of such day appoint *viva voce* some substantial freeholder entitled to vote at such election to be the judge of the choice and appointment of an inspector to hold said election, and shall, immediately after said judge is appointed, under his superintendence choose without ballot some substantial freeholder entitled to vote at the said election to be inspector to hold the same. Immediately after 7 certificate of each election, as soon as it is ascertained who are chosen commissioners, assessor and treasurer, the persons or person under whose superintendence the election is held shall enter in a book to be provided for that purpose a minute of such election, containing the names of the persons chosen commissioners, assessor and treasurer, and shall subscribe their or his name to said minute and shall give to the commissioners, assessor and treasurer elect certificates of their election; the book containing such minutes shall be preserved by the commissioners and shall be evidence.]

[By section 6, the style of the commissioners is the *Commissioners of the town of Smyrna*, that of the assessor is, the *Assessor of the town of Smyrna* and that of the treasurer is, the *Treasurer of the town of Smyrna*.] 8 Style of officers

Sect. 7. It shall be the duty of the commissioners of the town of Smyrna for the time being or the survivors of them or a majority of them or the survivors of them, and they are hereby invested with full and ample power therefor, to cause all the streets, lanes and alleys of the said town, both those now being therein and such new ones as may be laid out and located under the provisions of this Act, to be repaired, supported, opened, regulated and amended, and all obstructions and nuisances at any time therein being to be removed or abated in such manner as they may deem most proper and conducive to the convenience and interest of the citizens of the said town, and in conformity to the survey and plot of the said town so to be made as aforesaid by virtue and in pursu-

9 Commiss'rs their duties & powers

ance of this Act, and for these purposes, and also to defray all expenses, costs and charges arising and accruing in consequence of any thing contained in or to be done under this Act, to cause such sum or sums to be raised annually by way of tax to be assessed, levied and raised on the real property within the said town, as to them shall appear to be right and proper: *provided always*, that the said commissioners shall not be compelled to support, repair or amend the streets in the said town now deemed public highways and supported by the county of Kent, except only so far as they may consider it to be for the particular convenience and accommodation of the inhabitants of the said town.

10 Nuisances

Sect. 8. The said commissioners of the town of Smyrna for the time being and the survivors of them or a majority of them or the survivors of them shall be, and they are hereby authorized and empowered, required and directed to cause all obstructions and nuisances, that may at any time be in any of the streets, lanes and alleys of the said town, to be removed or abated: and in case any person or persons, who shall occasion such obstruction or nuisance, shall neglect or refuse to remove the same within three days after being required so to do in writing by the said commissioners or the survivors of them or a majority of them or the survivors of them, he, she or they so refusing or neglecting to remove such obstruction or nuisance as aforesaid shall forfeit and pay to the treasurer of the said town, for the use of the said town, the sum of five dollars to be recovered in the name of the treasurer of the town of Smyrna, as debts under forty shillings are now recoverable by the laws of this State: and the said commissioners may moreover cause such obstruction or nuisance to be removed or abated as aforesaid.

11 Penalty for  
not removing

12 Commis's  
conservators  
of the Peace  
in the town

Sect. 9. Each of the commissioners of the town of Smyrna for the time being, during his continuance in office as such, shall be a conservator of the peace within the limits of the said town, with full power and authority to do all things, for the preservation of the peace within the limits of the said town, that any other conservator of the peace of this State may or can do by the laws of this State. And each of the said commissioners, before entering upon the duties of his office as such, shall take an oath or affirmation faithfully and impartially to discharge the duties of his office as commissioner of the town of Smyrna to the best of his skill and judgment; which oath or affirmation shall be administered by any Judge or Justice of the Peace of this State: and a certificate of the administration of such oath or affirmation shall be made by the person administering the same, in the record book of the election of such commissioners.

13 Oath of  
commissioners

14 Assessor,  
his duties &  
powers

Sect. 10. The assessor of the town of Smyrna for the time being shall annually during the month of June make a true, just and impartial valuation and assessment of all the real estate within the said town: and the said assessor shall forthwith after making such assessment deliver to the commissioners aforesaid for the time being a duplicate thereof, containing the names of all persons being owners of real estate within the said town and the amount of the assessment or valuation of the real estate of each person respectively within the said town: which duplicate in the hands of

the commissioners shall be and remain open and free for the inspection of all persons concerned. And if any person or persons, shall conceive him, her or themselves aggrieved or overrated by the said assessor, it shall and may be lawful for him, her or them, at any time before the twentieth day of July after making such assessment, to appeal to the said commissioners for the time being, whose decision thereupon shall be final and conclusive. And in case one of the commissioners appeals, he shall not sit in judgment upon his own appeal; but it shall be decided by the other two or the survivor if one be dead: and the said commissioners or the survivors of them or a majority of them shall assess and value the real estate of the said assessor within the said town and add such valuation and assessment to the said duplicate. And after the said assessment and valuation shall be examined and adjusted as aforesaid by the said commissioners, all taxes shall be levied, assessed and raised on the property thus valued, in just and equal proportions and rates. And the said assessor, immediately after his election and before entering upon the duties of his office, shall take an oath or affirmation diligently, faithfully and impartially to perform the duties of his office to the best of his ability, knowledge and judgment; which oath or affirmation shall be administered by any Judge or Justice of the Peace of this State; and a certificate thereof shall be made by the person administering the same in the aforesaid record book of the election of the commissioners, assessor and treasurer aforesaid.

Sect. 11. The commissioners aforesaid or the survivors of them or a majority of them or the survivors of them, after having ascertained the sum necessary to be raised on the said town for the purposes of this Act, and having apportioned the same on the assessment and valuation aforesaid, shall yearly in the month of July or as soon thereafter as convenient furnish the treasurer of said town with a list containing the names of every person owning real estate within the said town, and opposite to each name respectively the amount of the real estate of such person within the said town, and the tax to be levied on such assessment from each person as aforesaid: which list shall be signed by the said commissioners for the time being, or the survivors of them or a majority of them, and shall contain a note or minute of the whole tax laid for the year being and the rate per hundred dollars necessary to raise that tax: and the treasurer of the said town immediately after receiving the said list shall proceed to collect the taxes mentioned in the said list, and shall have the same power and authority to collect the said taxes, as are given by law to the collectors of county rates and levies. And the said treasurer, before he enters on the duties of his office, shall give bond with sufficient surety in the penalty of one thousand dollars lawful money of the United States, to the commissioners of the said town, conditioned for the faithful discharge of the trust reposed in him and the payment over to his successor in office of all such sums of money as may remain in his hands upon the settlement of his accounts. And the said treasurer shall pay all orders drawn on him by the said commissioners or the survivors of them or a majority of them and shall settle his accounts with the said commissioners annually in the



22 settlement month of May or as often and at such times as they or the survivors of them or a majority of them shall require him thereto : and the said treasurer and assessor shall each receive for the performance of the duties enjoined on them by this Act a reasonable compensation to be determined by the said commissioners.

*Passed at Dover, 29 January, 1817.*

23 Review

[By section 2 of the additional Supplement passed 8 February 1826 to the Act aforesaid, Robert Register, James Hoffeecker jun. William Ringgold, William Denney and Abraham Moore or a majority of them are authorized to review the proceedings of Henry M. Ridgely, Willard Hall, Jacob Stout, Jonathan Jenkins and Alexander M'Clyment or a majority of them under the said Act, with power to confirm, vacate or alter either or any of the streets, lanes or alleys which said Henry M. Ridgely, Willard Hall, Jacob Stout, Jonathan Jenkins and Alexander M'Clyment or a majority of them caused to be surveyed, located and laid out and which had not been opened, and to locate and lay out new streets, lanes or alleys—and to appoint a surveyor to assist them &c. : the certificate under the hands of said Robert Register, James Hoffeecker jr. William Ringgold, William Denney and Abraham Moore or a majority of them with any map annexed thereto or referred to therein to be recorded in the office for recording of deeds in Kent county and the said record or a copy thereof to be good evidence—and said proceedings to be final and conclusive ; provided such proceedings should be so certified and recorded in one year and if not the same should be void and said supplement of no effect.]

*Passed at Dover, 8 February, 1826.*

—o—

## ST. GEORGES.

1826

AN ACT for establishing the boundaries of the town of St. Georges and for other purposes therein mentioned.

1 Commis-  
sioners to fix  
and lay out  
streets

Section 1.—[By this section George Clark, Philip Reybold, William Guier, John Randall and Jacob Vandegrift are appointed commissioners, with authority to them or any three of them, taking with them a skillful surveyor, to make a survey of the town of St. Georges, and ascertain and fix the limits and boundaries of the same, and lay out, open and regulate the streets, lanes and alleys; a map of the survey, containing the boundaries of the town and the courses, width and names of the streets, lanes and alleys, to be made, and to be signed by the surveyor and commissioners and lodged in the Recorder's office in New-Castle and there recorded: the map or the record thereof is made evidence.]

2 Stones &c.  
land marks

Sect. 2. The said commissioners shall fix posts and stones in the earth in the center 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 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 and shall be thereof convicted in the Court of General Sessions of the Peace for the county aforesaid, he or they shall severally forfeit and pay the sum of forty dollars besides the costs of prosecution, to the use of the commissioners and inhabitants of the said town of St. Georges, to be employed in and towards defraying the expenses of carrying this law into execution.

3 Penalty for removing

Sect. 4. The commissioners appointed by this Act shall continue in office until the first Monday of May, which will be in the year of our Lord one thousand eight hundred and twenty-six ; on which day, and on the same day annually in future, the freeholders and inhabitants, who are taxable of the said town of St. Georges, shall meet at the public house now occupied by John Ball in the said town and the electors between the hours of twelve in the forenoon 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 stiled "Commissioners". 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 to 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 walls or for so much thereof as the next builder may have occasion to make use of, before such next builder shall anywise 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* 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.

4 Commissioners elected

5 pavements & gutters

6 party walls

Sect. 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:—When such houses or buildings as aforesaid shall fall down by reason of decay or otherwise be destroyed, 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 con-

7 Penalty for building without, or contrary to direction

ployer as a master builder, shall forfeit and pay the sum of twenty dollars, each, besides costs of prosecution to be recovered in the name of the commissioners aforesaid by bill, plaint or information in any court of record within this government, wherein no essoign, protection or wager of law shall be allowed nor any more than one imparlance; and all such forfeitures shall be paid to the treasurer for the time being, to be appointed as is hereinafter mentioned, one moiety thereof for the use of the said town and the other moiety to the prosecutor.

8 Fees (10) Sect. 6. 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 buildings, the sum of one dollar each, and no more.

9 Partition fences Sect. 7. 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 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 said parties; and if either party, between whom such partition fence is or shall be made, on request of the other, shall neglect to pay his or 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, then the party at whose cost the same was so made or repaired, may recover the same before any Justice of the Peace for the county of New-Castle, 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.

10 Fees Sect. 8. The said commissioners shall be and they are hereby authorized empowered and required to guard against encroachments being made on 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 inclosures 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 presume to 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 Sessions of the Peace shall be fined in any sum not exceeding fifty dollars to be paid to the treasurer for the time being, to be applied for the removing such nuisances and for defraying the expenses arising from the putting this law in execution.

11 Encroachment on streets Sect. 9. 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

12 penalty for not removing  
13 Taxes—assessment

a map or plan of the said town and recording the same, for adjusting any matters of controversy relative to the bounds of said town, streets, lanes and alleys, for setting up and fixing land marks &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, the said 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.

Sect. 10. 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 St. Georges a duplicate of the assessment made in virtue of this Act; and every person and owner or names of every estate within the said town so assessed shall within thirty days after the said duplicate shall be set up at two of the most public places aforesaid pay to the treasurer to be nominated and appointed by the said commissioners, 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 by sale of the delinquent or delinquents' goods and chattels lands and tenements, by warrant under the hand and seal of any one Justice of the Peace; which Justice is hereby authorized and required to issue at the instance and request of the said treasurer, in the name of the whole or a majority of the said commissioners, and to direct the same to any constable of the said county or to the sheriff of the county of Newcastle at the discretion of the said treasurer : and in such case any sheriff or constable, to whom such warrant may be delivered, is hereby authorized and empowered to expose to sale by public vendue, after ten days' notice, the said goods and chattels, lands and tenements of the said delinquent or delinquents, and to sell the same to the highest and best bidder, and apply so much of the amount of sales as may be necessary to discharge the said assessment, and return the overplus, if any there be, to the owner or owners, deducting such legal costs therefrom as may be allowed by the laws of this State in such cases made and provided ; and the said commissioners shall settle their account annually before a committee to be appointed by the inhabitants of the said town at a town meeting.

Sect. 11. 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.

14 Taxes—  
collection

15 treasurer  
(17)

16 settlement  
of commissrs

17 Treasurer,  
payments &  
accounts

*Passed at Dover, February 7, 1825.*

1791  
1 Light-house

[By Act of January 29, 1791, the Senators of this State were required to execute a deed or deeds conveying to the United States all the title of this State to the Light-house, in Sussex county near the entrance of the Delaware bay, and the public piers opposite to Rheeden-Island and near the town of Port Penn, together with all the lands, tenements and appurtenances thereunto belonging, and all necessary jurisdiction over the same.]

1803

*AN ACT ceding to the United States of America, the sites of piers and piers in the river Delaware off the town of New-Castle, and jurisdiction in and over the same.*

2 Piers at N.  
Castle

Whereas by an Act of the Congress of the United States of America, passed the sixth day of April, in the year of our Lord, one thousand eight hundred and two, entitled "An Act authorizing the erection of certain light-houses, and for other purposes," it was among other things enacted, that it should be lawful, for the Secretary of the Treasury under the direction of the President of the United States to cause to be expended in repairing and erecting public piers in the river Delaware, a sum not exceeding thirty thousand dollars, and that the same be paid out of any monies in the Treasury not otherwise appropriated: *Provided*, that the jurisdiction of the site, where any such piers may be erected, shall be first ceded to the United States according to the conditions in such case by law provided; and whereas it is proposed that part of the said sum of money shall be expended and laid out pursuant to the said recited provision in the erection of certain piers in the river Delaware at the port of New-Castle, provided that the Legislature of the State of Delaware shall by law cede to the United States the sites, where any such piers may be erected, according to the conditions in such case by law provided:—

Section 1. The sites of all piers, that may hereafter be erected under the herein before recited provision of the Act of Congress aforesaid off the town of New-Castle in the river Delaware aforesaid, and the lands and tenements thereunto belonging, together with the jurisdiction of, in and over the same, and the said piers, when erected, are declared to be and are hereby ceded to and vested in the United States of America fully and absolutely.

Sect. 2. The public piers heretofore erected off the said town in the river Delaware aforesaid and the sites thereof and of whatsoever additions that may be made thereto and the lands and tenements thereunto belonging, together with the jurisdiction of, in and over the same, are declared to be and are hereby ceded to and vested in the United States aforesaid fully and absolutely.

Sect. 3. The Senators of this State in the Congress of the United States are hereby authorized, empowered and required (if the President of the United States should deem it necessary) to execute any deed or deeds of confirmation or of other nature, conveying to the United States of America all the right, title and interest of the State of Delaware of, in and to the sites of piers and piers in the river Delaware off the town of New-Castle, together with all the lands, tenements and appurtenances thereto belonging, with full jurisdiction in and over the same, as granted and ceded,

or declared or intended so to be, by the provisions contained in the two preceding sections of this Act, to have and to hold to the said United States fully and absolutely.

*Passed at Dover, Jan. 11, 1803.*

AN ACT ceding to the United States the sites for piers at New-Castle.

1827

Section 1. All the jurisdiction, right and title of this State unto and over so much of the river Delaware at New-Castle 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.

Sites for piers ceded to U. S.

reservation & proviso

*Passed at Dover, February 1, 1827.*

[By Act of January 25, 1809, the senators and representatives of this State in Congress are authorized to cede to the United States all the title of this State to the jurisdiction and soil of such places, as the government of the United States may choose, at or near Wilmington, New-Castle, Port Penn or Lewes or elsewhere on the bay or river Delaware for the purpose of erecting forts, batteries and fortifications for the protection of the bay or river Delaware and the adjacent country, upon these express conditions, that the said forts, batteries or fortifications should be erected at the expense of the United States within three years from the date of said Act, and be continued and kept up forever thereafter for public use, and that all process, civil and criminal of this State might be executed in said places in the same manner as if the cession had not been made.]

2 Sites for forts, &c.

AN ACT ceding to the United States of America the jurisdiction which this State has over the Pea Patch, on certain conditions therein mentioned.

1813

Section 1. All the right, title and claim, which this State has to the jurisdiction and soil of the island in the Delaware commonly called the Pea Patch, be and the same is hereby ceded to the United States of America, for the purpose of erecting forts, batteries and fortifications for the protection of the river Delaware and the adjacent country; upon the condition nevertheless; that the said forts, batteries and fortifications shall be erected and kept up at the expense of the United States, and also that all process, civil and criminal, issuing under the authority of this State may be executed and served within the place, the jurisdiction of which is hereby ceded as aforesaid, in the same manner, as if no such cession had been made.

4 Pea Patch

*Passed May 27, 1813.*

1827 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.*

5 Break-water Section 1. 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 harbor, 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 harbor or such defences, and for no other uses and purposes whatsoever:—*Upon condition nevertheless, that such harbor 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 harbor 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.*

*Passed at Dover, January 26, 1827.*

1829 AN ACT *to cede to the United States the jurisdiction over a piece of land and marsh therein mentioned.*

Light-house between Duck creek & Mahan's ditch Section 1. For the purpose of erecting a light house, five acres of land and marsh at any place between the mouth of Duck creek and Mahan's 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.

Sect. 2. 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.

*Passed at Dover, February 11, 1829.*

## I.

## AN ACT to alter and re-establish the charter of the borough of Wilmington.

18 J9

Whereas the corporate officers and other inhabitants of the borough of Wilmington in the county of New-Castle have by their memorial represented, that the charter incorporating the said borough and granted in the year one thousand seven hundred and thirty-nine, hath from the increased population of the said borough and from various other causes been found incompetent to the good government and well being of the same, and by their petition prayed for redress in the premises:—

Section 1. From and after the organization of the powers and authorities hereinafter specified, the powers, rights and privileges granted by or arising from the said charter, otherwise than hereinafter reserved, shall cease and determine, and the said borough of Wilmington be governed as follows.

Sect. 2. The said borough shall be bounded as follows, viz. Beginning at the mouth of Brandywine creek on the easterly side of the same, thence along the eastern and north-eastern side thereof, about two miles and a half to the old ford above the head of the tide water, thence crossing the Brandywine westwardly, and passing along the old king's road, according to the several courses thereof, to the present State road leading from Wilmington to Lancaster, thence in a direct line south easterly, passing over the mouth of the rivulet called Stalcup's gut, to the opposite side of Christiana river, thence down that side of the same until southwest of the lower point of the mouth of Brandywine, thence northeast to the place of beginning.

Sect. 3. All free white male citizens of this State of the age of twenty-one years and upwards residing within the borough assessed for and having paid a borough tax, shall be taken and deemed citizens thereof and shall enjoy all the rights and privileges arising under this Act.

Sect. 4. The officers of the borough shall consist of two burgesses, viz. a first and second burgess, thirteen members of council, one high constable, one treasurer and one assessor, and such other officers as may be deemed necessary by the corporation to carry into effect the powers hereby granted: *provided* that no person shall be capable of serving as burgess, member of council, high constable, treasurer or assessor, who shall not at the time of his election be a citizen of this State and a freeholder and resident in said borough.

Sect. 5. The said burgesses and borough council of the said borough and their successors forever hereafter shall be one body politic and corporate, in deed and in law, by the name and style of *The Burgesses and Borough Council of the Borough of Wilmington* and by that name shall be and are hereby made able and capable in law to have, take, purchase, receive, possess, enjoy and retain, to them and their successors, lands, tenements, hereditaments, goods, chattels and effects, of what kind, nature or quality soever, and the same to sell, grant, demise, alien or dispose of, to sue and



be sued, plead and be impleaded, answer and be answered, defend and be defended in all courts of law and equity or any other place whatsoever, and also to make, have and use a common seal, and the same to break, alter and renew at their pleasure, and generally shall have all the privileges and franchises incident to a corporation or body politic.

7 Election

Sect. 6. The burgesses, members of council, high constable, treasurer and assessor shall be elected annually by ballot on the first Tuesday of May.

8 Elected—  
not serving—  
penalty

Sect. 7. Any person duly elected to the office of burgess as aforesaid, who shall neglect or refuse to serve as such within the said borough, shall forfeit and pay any sum not exceeding twenty dollars: and each and every person elected as aforesaid to the office of a member of council, who shall neglect or refuse to serve as such, shall forfeit and pay any sum not exceeding fifteen dollars: and each and every person elected as aforesaid to serve as high constable or as treasurer or assessor to the said borough, who shall neglect or refuse to perform the duties of the said respective offices, shall forfeit and pay any sum not exceeding ten dollars: and the amount of all fines accruing hereby shall be recovered for the use of the said borough, as other debts of like amount are recoverable in this State: *Provided* that no person or persons shall be liable to a fine or fines, for any two years in succession, for neglect or refusal to serve in any of the offices aforesaid.

9 Borough  
Council  
[22]

Sect. 8. The burgesses and members of council shall constitute the legislative body for the said borough of Wilmington, and shall be denominated, when assembled, the borough council. The settings of this council shall be public. In this assembly, the first burgess, or in case of his absence the second burgess, shall preside and keep order, subject to such rules and regulations, as may be established by ordinance of the borough council: nine members shall constitute a quorum to do all manner of business arising under this Act: *provided* that no ordinance shall pass the council, unless the same shall have the concurrence of a majority of all the members of the borough council, and have had at least two readings at a previous stated meeting or meetings thereof. Nor shall any ordinance, that may hereafter be passed by the said borough council, be repealed, unless notice shall have been given and entered upon the minutes of the council at a stated meeting thereof, that at the next succeeding stated meeting a motion would be made for the repeal aforesaid.

10 Quorum

11 manner of  
passing or re-  
pealing ordi-  
nances

12 Majority

13 election  
by Council

Sect. 9. A majority of voices in the council shall determine and decide upon all cases that may come before it: and when it is required by two members, the question shall be taken by ayes and nays, which shall be entered in the minutes: and all elections for any officer or officers to be appointed by the same, shall be by ballot and by a majority of all the votes of the members of the council.

14 Burgesses  
their powers

Sect. 10. The burgesses of the said borough shall constitute the executive power thereof, and shall be and they are hereby constituted conservators of the peace within the same and authorized, empowered and required to do and to execute all those matters and things in the said borough of Wilmington, which Justices of the

Peace for the said county of New-Castle may and can lawfully do; and shall further be invested with authority, in all lawful cases of commitment, to commit persons guilty of a breach of the peace, to such place or places as may be provided by the borough, until they can be conveniently removed to the common gaol of the county; and in like manner on complaint made by any two house-keepers they shall have power to disperse or commit as aforesaid any assemblage of minors, who may be collected by night or by day in any of the streets, lanes or alleys, unless they have with them the written permission of their parents, masters or guardians; but such permission shall in no wise protect them from commitment and prosecution for any overt act charged on them. And the said first burgess shall have the custody of the seal of the borough and the right of affixing the same.

Sect. II. The borough council constituted as aforesaid, shall have power to enact ordinances to preserve the health of the borough and prevent the introduction of infectious or contagious diseases, (and for this purpose their jurisdiction shall extend to any distance within one mile of the boundaries of the same), and in such ordinances may organize a board of health for the said borough; which board shall be vested with all the powers and authorities which the council might or could exercise relative to the object of their institution. Of this board, or of the borough council when sitting as a board of health, the health officer of Wilmington shall always be a member, but shall enjoy no other right in the decision of any case that may come before the said board or council, than any other member thereof, any law, usage or custom to the contrary notwithstanding; and the said borough council may pass ordinances to define and remove nuisances, whether in the public streets, lanes or alleys or elsewhere within the borough, to provide night watches and erect lamps, to ascertain the boundaries of streets, lanes and alleys, and establish new ones, or alter streets, lanes and alleys, and repair and amend all streets, lanes and alleys within the said borough, making adequate compensation to the party injured, to be ascertained by three men or the majority of them, to be appointed by the Court of Common Pleas upon the application of the corporation or of the party complaining, (provided that nothing in this Act shall be construed to extend to those who may conceive themselves injured by the completion of the ground plan of the streets, as already established by law, or of any other ground plan which may hereafter be legally established), to provide for the regulation of auctions and auctioneers, for cleaning the docks and regulating the wharves, to provide for the safe keeping of standards of weights and measures and for the infliction of penalties on those who use false weights or measures, to regulate public amusements, to fix and declare the weight of bread, and size of brick, to regulate the cordage of wood and bark, and to determine what may be esteemed merchantable, to appoint wood-corders and establish their fees, to regulate party walls, to erect market-houses, and to regulate the markets, to regulate the sweeping of chimnies, and establish the rates, to erect pumps or any other apparatus for supplying the citizens with good and wholesome water, to repair and amend the same, and to assess and receive a tax therefor,

15 Borough Council—  
their powers in respect to contagious diseases

Nuisances

lamp

streets

auctions

wharves

weights, &c.

amusements

wood-corders

party walls

markets, &c.

inspectors of  
flour

illegally ven-  
ding liquors

(35)

16 Annual  
meeting of  
Council  
17 Taxes

18 assessm'ts

19 rate there-  
of

20 notice

21 appeal

(provided no interference be made with any of the property, works or emoluments of the Wilmington spring water company, without their consent being first had and obtained thereto), to appoint gaugers, inspectors of flour, inspectors of salted provisions and inspectors and measurers of lumber, and to establish their fees, to provide for the weighing of hay, and for the measuring or weighing of coal, lime, grain or any other matter sold in the said borough, to regulate the storage of gunpowder, or any other dangerously combustible matter. And the said council shall have the power of fining illegal venders of spirituous liquors within the borough; they shall have power to lay and collect fines on the owners or harborers of any dog or hog, which may be found at large in any of the streets, lanes or alleys of the borough aforesaid; which fines, when collected, shall be paid and applied as by the laws of this State the like fines are now paid and applied; they shall have the power to appoint and commission constables, who shall possess like powers within the said borough, as are possessed by the constables of the aforesaid county of New-Castle, and in general shall have power to do all those matters and things, for the well being of the said borough, which shall not be in contravention of any existing laws of this State or the constitution thereof.

Sect. 12. The said borough council shall meet on the first Tuesday in June in each year or within ten days of the same, and estimate and fix the sum and sums of money necessary to be raised on the persons and estates in the said borough, for the public uses of the year ensuing; and thereupon the first Burgess, or in case of his absence the second Burgess shall issue his precept countersigned by the clerk of the council, directed to the assessor of the said borough, requiring him within sixty days from the date thereof to make out a true and impartial list of all the persons and estates within the same, together with the sum and sums of money in dollars, which it shall appear to him the said persons or property ought to be rated at: assessment on property shall be made according to the annual interest at six per centum, the several properties would probably produce on the amounts, or on the estimated value thereof, if sold for ready money; and the said list and assessment shall be laid before the council to be examined; and being approved, a fair copy or copies thereof shall be made out by the clerk of the council and published for the information of all concerned for at least two weeks previous to the time then to be appointed, for holding a court of appeals (of which notice shall be given, as aforesaid:) and the said council shall be, and they are hereby constituted a court of appeals for the hearing and redressing of such, as may appear to be aggrieved, with power in concurrence with the assessor to assess such as may have been left off the list: *provided* notice thereof shall be given to the person, or the representative of an estate so assessed, so that he, she or they may have an opportunity of appearing before the court of appeals; and after the said council shall have held a court of appeals as aforesaid, they shall estimate and fix how many cents to the dollar will be necessary to raise the sum or sums of money required as aforesaid, and the clerk shall thereupon make out or cause to be made out a true list agreeably to the proceedings afore-

said, certify the same under his hand and seal of the borough, and deliver the same into the hands of the collector within ten days from the time the dollarage was laid as aforesaid, with an order under the hands of at least one of the said burgesses and two of the said council, (which they are hereby authorized to make) requiring the said collector forthwith to collect and receive from the persons and estates assessed, the several sums in the said list mentioned; and in case any person or persons so rated or assessed by virtue of this Act shall neglect or refuse to pay the sum or sums so assessed for the space of six days after demand made, the said collector shall, by a warrant under the hand and seal of one of the burgesses for that purpose (which is hereby authorized to grant), levy the same by distress and sale of the delinquent's goods and chattels, rendering the overplus, if any, after reasonable charges deducted, to the owner or owners thereof; but if no distress can be found by the collector, and the party refuses or neglects to show him goods or chattels of his own forthwith to satisfy the money due with reasonable charges, then the said collector shall make return on oath or affirmation of such want of goods, to the person who may have issued such warrant, and the person to whom such return shall be made, shall and may by warrant under his hand and seal commit the said delinquent to the common gaol of the county there to remain until discharged by due course of the law; or the same may be levied on the goods and chattels of any of his tenants, if such there be, and the delinquent shall be obliged to discount it out of the first rent that shall afterwards accrue from the estate rented; and in case any grounds, buildings or estate belong to a minor or minors or absent person or persons, then the same shall be recovered from the person or persons having the care of such grounds, buildings or estate, and the receipt of the said collector shall be a good voucher to all executors, administrators, guardians, trustees or attorneys against their principal; and when any owner or owners of any grounds, buildings or estate, or their executors, administrators, guardians, trustees or attorneys cannot be found, and they shall neglect to pay the assessment as aforesaid, then it shall and may be lawful for either of the said burgesses to issue his warrant, authorizing the said collector to levy the same on the grounds, buildings or estate of such absent owner or owners, or minor or minors, and the said collector is hereby authorized to sell the same at public auction for the shortest space of time in which the rents and profits will satisfy the said debt and costs; all which said several sums of money when collected, the said collector shall pay over without delay to the treasurer of the borough.

22 order to collector

23 his powers

Sect. 13. The high constable and the officers appointed by the council shall assist the burgesses in carrying into effect the ordinances of the borough, and shall perform such duties as are herein-after mentioned, or may be prescribed by ordinance.

24 High-constable &amp; officers

Sect. 14. The treasurer of the borough shall give security in double the amount that may probably come into his hands, for the true and faithful performance of such duties as may be ordained. And all constables and collectors appointed under and by virtue of this charter shall give bond and security, to be approved by the burgesses of the borough, for the faithful discharge of their duty.

25 Treasurer's bond

[37]

26 Assessor

Sect. 15. The assessor shall perform such duties, other than those before mentioned, as may be ordained for the better performance of the duties of his office.

27 Oaths of office [33]

Sect. 16. Every officer elected or appointed under this Act of incorporation, before he enters upon the duties of his office, shall take an oath or affirmation to support the constitution of the United States, and the constitution of the State of Delaware, and that he will perform the duties of the office unto which he hath been elected or appointed, with fidelity.

28 Salaries fees, &amp;c.

Sect. 17. The salaries, fees or emoluments of the officers of this corporation shall be established by ordinance; provided no salary fee or emolument, of any officer shall be reduced or augmented, for and during the period of service, for which he may have been elected or appointed: but no ordinance, establishing the salaries, fees or emoluments of any elective officer, shall at any time take place, previous to the annual election then next ensuing, and unless it shall have been published, with the ayes and nays thereon, at least two weeks before the said election.

29 Meetings of council

Sect. 18. The council shall meet at least once in every month at such time and place, as may be from time to time agreed upon. Special meetings may be called by the first burgess upon his own motion, or shall be called, when five members may request or demand a meeting.

30 Vacancies

Sect. 19. In case of the death, absence, resignation or refusal to act of either of the burgesses, any member of the council, high constable, treasurer or assessor, or either or any of them, the members of council, who meet, shall have the right to appoint a president, pro tempore; and the presiding member, at a stated or special meeting of the council, shall issue his writ, by order of the council, to the high constable, or in case of his death, absence, resignation or refusal to act, to a high constable to be appointed by the council to act pro tempore, requiring him to hold an election on the day therein specified; to fill up the vacancy or vacancies occasioned by such absence, death or deaths, resignation or resignations, refusal or refusals: and the said high constable shall give public notice for at least two weeks previous to the time in the said writ appointed, that an election will be held at a certain time and place mentioned in the said writ; for the purpose of filling up the vacancy or vacancies occasioned as aforesaid: which election, the said high constable shall conduct, together with all other elections, and make returns thereof, as may be established by ordinance: provided that all elections shall be opened between the hours of ten and twelve o'clock in the forenoon and closed at six o'clock in the afternoon of the same day.

31 election

32 Absence of first burgess or both

Sect. 20. In all cases, wherein the presence or act of the first burgess is demanded or required to any act or duty or duties or otherwise; when he shall neglect or refuse or be incapable to attend to the same, his place shall be supplied by the second burgess, or in case of his neglect, refusal or incapacity, by one of the members selected for that purpose by the council to act pro tempore, who shall exercise all and every the duties and powers of the first burgess, until one of the burgesses first elected shall be able and willing to act, or a new election can be held as aforesaid.

Sect. 21. The first burgess shall be qualified into office by any Justice of the Peace for the county of New-Castle, and when thus qualified shall within ten days of the time of such qualification issue his writ under his hand and seal directed to the high constable, requiring him to summon the second burgess, the members of council, high constable, treasurer and assessor chosen at the late election, to be and appear at a certain time and place therein mentioned for the purpose of being qualified into their several offices, and upon failure thereof shall forfeit and pay such penalties, as may be established by ordinance: and the said burgesses or either of them being qualified shall administer the necessary oath or oaths, affirmation or affirmations, upon being required thereunto by the council, to any of the other officers of this corporation.

33 Oath of office administered [27]

Sect. 22. All fines and forfeitures accruing under this Act, or by any ordinance of the said borough of Wilmington, may be recovered before either of the burgesses, in the name of the said borough, as other debts of like amount are recoverable in this State, and when recovered, shall be and remain for the use of the borough, except fines for the illegal vending of spirituous liquors, as before excepted in section the eleventh.

34 Fines recovered—

Sect. 23. In case it should happen, that the election day should pass over without an election being held, or in case of the omission of the execution of any authority delegated by this Act, the powers of this corporation shall not cease; but the authority of each and every the officers thereof, shall continue, until a new election can be legally held by resolve of the council and notice as aforesaid, and the officers chosen thereat duly qualified: provided at the first meeting of the council, a writ shall be issued, as in the case of vacancies, as aforesaid; but if it shall happen that the first burgess chosen as aforesaid shall fail to present himself to a proper officer, to be duly qualified into the said office for a longer period of time than five days after this election as aforesaid, the governor of the State may appoint another person in his room, who shall be invested with all the power and authority, which the said first burgess duly elected might or could have exercised.

35 Omission to elect, &c.

Sect. 24. All the powers, privileges, rights or jurisdictions granted to the borough of Wilmington under its former charter, not hereby supplied, shall be and remain in full force and virtue, as they regard the said borough of Wilmington; and also all debts and obligations binding on, or due, or property or other things of value, belonging to the said borough, under its former charter, shall be equally binding on, or due to, and be the property and right of, and be vested in, the said borough, under its present charter; and all and every part of the laws of this State, as it regards the said borough, hereby amended or supplied and no more shall be, and they are hereby repealed, made null and void.

36 Debts & obligations under former charter

Sect. 25. All the powers and authorities granted by the Acts of the General Assembly of this State to the burgesses under the former charter, are hereby transferred to the burgesses under the present charter.

Authority of burgesses under the former charter

Sect. 28. This Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by all Judges and Justices, and all other persons whatsoever, without the same

Public Act

being specially pleaded ; and every matter and thing herein contained shall be construed and taken most favorably and beneficially for the said corporation.

*Passed at Dover, January 31, 1809..*

1823

### A SUPPLEMENT to said Act.

37 High constable's bond

The person or persons, who may hereafter be elected to the office of high constable of the borough of Wilmington, shall previous to entering upon the duties of said office give bond and security, to be approved of by the burgesses of said borough, for the faithful discharge of the duties of the office.

*Passed at Dover, January 17, 1823.*

1825

### AN ACT for the relief of the borough of Wilmington and for other purposes.

38 Power to borrow money

Section 1. The burgesses and borough council of the borough of Wilmington may have full power and authority to borrow such sum or sums of money, as may be necessary to enable the said burgesses and borough council to discharge a debt or debts now due from the borough ;—*provided* that every such loan or loans shall be made by an ordinance, which shall be adopted by the votes of two-thirds of all the members of the council.

Sect. 2. The burgesses and borough council of the borough of Wilmington may have further power and authority to borrow such sum or sums of money, as may be necessary for the improvement or advantage of the said borough of Wilmington ;—*provided* that every such loan or loans shall be made by an ordinance, which shall be adopted by the votes of three-fourths of all the members of the council.

*Passed at Dover, Feb. 2, 1825.*

## II.

1772

### AN ACT for the better regulating the wharves, public streets, buildings, party walls and partition fences in the borough of Wilmington, in the county of New-Castle, upon Delaware and for raising money on the inhabitants of the said borough for the public use and benefit thereof.

Whereas the honorable George Thomas, esq. Lieutenant Governor of the counties of New-Castle, Kent and Sussex, upon Delaware, and province of Pennsylvania, by letters patent, under the great seal of the said government, bearing date the sixteenth day of November, in the year of our Lord one thousand seven hundred and thirty-nine, did erect the town of Wilmington aforesaid into a borough, &c. &c.

[Sect. 3. Among other things contains regulations concerning the streets in said borough afterward supplied.]

39 Land-marks

Section 4. The several posts and mark-stones now set and fixed in the earth in the middle of the streets as aforesaid, as well as all

such other posts and mark-stones as shall from time to time hereafter be so set and fixed in the earth by the borough surveyors or regulators, shall in all cases and in all courts of law within this government be deemed, taken, established and allowed as land-marks.

Sect. 5. *And* if any person or persons shall at any time hereafter wilfully pluck up or remove any of the said posts or mark-stones and shall be thereof convicted in the Court of Quarter Sessions of the county of New-Castle, he or they shall severally forfeit the sum of twenty pounds, besides the costs of prosecution, to the use of the burgesses and inhabitants of the said borough, to be employed in and towards the repairing the streets of the said borough; and it shall and may be lawful for the said burgesses to reward the informer out of the said penalty to be incurred, according to their discretion, not exceeding a moiety thereof.

40 Penalty on removing

Sect. 6. *And*, in order that the said streets and such other streets, lanes and alleys as shall be hereafter laid out, may be duly regulated, made, opened, amended and repaired, and irregularities and controversies in relation to party-walls and laying the foundation of buildings in the said borough may be prevented—the burgesses and assistants of the said borough shall and may from time to time elect, nominate and appoint three or more discreet and skilful persons to be surveyors or regulators, who upon application made to them shall have full power and authority, and they are hereby required and directed to regulate and lay out the proper gutters, channels and conduits for carrying off the waters in the said borough, and to enter upon the lands of any person or persons in order to set out the foundation and regulate the walls to be built between party and party within the said borough, as to the breadth or thickness thereof; which foundation shall be laid equally upon the lands of the persons between whom such party wall is to 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 shall have occasion to make use of, before such next builder shall any-ways use or break into the said wall; and the charge or value thereof shall be set by the said regulators or any two of them.

41 Surveyors & regulators (13)

42 party-walls (14)

Sect. 7. If any person or persons shall begin or lay the foundation of any party wall or other building as aforesaid, before the same be viewed and directed by the said regulators or some two 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 twenty pounds each, besides the costs of prosecution, to be recovered in the name of the burgesses and inhabitants of Wilmington, by bill, plaint or information, in any court of record within this government, wherein no essoign, protection or wager of law shall be allowed, nor any more than one imparlance; and all such forfeitures shall be paid to the treasurer of the said borough for the time being, one moiety for the use of the said borough, and the other moiety for the prosecutor.

43 Penalty on building without directions

Sect. 8. *Provided always*, That if either of the parties, between whom any foundation or party wall is to be made, shall think himself aggrieved by the order or direction of the said regulators, he,

44 Appeal



she or they may appeal to the burgesses and assistants of the said borough at their next meeting, who upon deliberate hearing of both sides shall finally adjust and settle the same, without further or other appeal; and the costs thereof shall be paid as the burgesses and assistants shall direct and order.

46 Fees

Sect. 9. The regulators or surveyors for their pains and trouble in and about the premises shall be paid by the party or parties concerned in such foundation, or erecting such party wall or other building, the sum of three shillings each, and no more.

48 Partition fences

Sect. 10. The surveyors or regulators or any two of them, shall have full power to regulate all partition fences within the said borough; 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 repair at the equal costs of the parties, so that the price for making the same exceed not four pounds for every hundred feet in length, and so in proportion for a greater or lesser quantity, unless the owners or possessors, between whom such fence shall be erected, do agree otherwise.

47 Expenses of fences recoverable before either burgess

Sect. 11. If either party between whom such partition fence is or shall be made, shall neglect or refuse to pay his, her or their share or proportion of the expense of such partition fence, and of keeping the same afterwards in repair, then the party at whose cost the same was made or so repaired, may recover the same before either of the burgesses, as debts under forty shillings or five pounds are recovered before other Justices of the Peace by the laws of this government.

48 New streets, &c.

Sect. 12. It shall and may be lawful to and for the freeholders and persons having a vote at the election, within the said borough, from time to time and as often as occasion shall or may require, further to extend those streets [*laid down in the aforesaid plan*]; and likewise to lay out all other necessary new street or streets within the said borough; *Provided always*, That no streets shall be hereafter extended, or any new streets laid out, but by virtue of or pursuant to an ordinance of the said borough for that purpose made, by the general consent of the freeholders and persons aforesaid in a General Town's-Meeting assembled.

49 Ground valued

(a) (55)

Sect. 13. *Provided also*, That before any of the said streets so extended or laid out shall be opened, the owner or owners of the ground over which the same shall be laid shall be paid or tendered [*the value (a) of the said ground*], to be ascertained by three impartial freeholders of the county of New-Castle not inhabitants of the said borough, or a majority of them, to be summoned by the sheriff of the said county for the time being, in pursuance of a warrant or precept under the hands and seals of the burgesses, who are hereby authorized and required to grant the same, and to which the said sheriff is hereby ordered and required to pay due obedience; and the said freeholders or any two of them are to make and return their inquisition or report in the premises on their respective oaths or affirmations, to be administered by the said sheriff, to the said burgesses, who are to cause the same to be entered by the town clerk upon the books or minutes of the said borough, and the sum or sums mentioned in such inquisition or report shall be assessed and raised, as other public monies are directed by this Act, on the inhabitants and taxables within the same borough.

Sect. 29. *And whereas* the owners of wharves on Christiana river, in the said borough, may and do carry out their wharves into the same river as far as they respectively please, to the prejudice of each other, and of the navigation in said river:—Griffith Minshall, William Poole, Daniel Byrnes, Job Harvey, Joseph Shallcross, Rumford Daves and Hezekiah Niles, gentlemen, or any four of them, are hereby authorized, empowered and required, to view the river Christiana aforesaid, and consider how far it may be necessary and convenient to build or extend the wharves into the aforesaid river within the said borough, and to fix and determine how far the said wharves at any time hereafter may be built or extended into the said river, by limiting the several distances or extent thereof in feet and inches, to be computed and measured from the southerly side of Water street, or of any other street or streets within the said borough, or from other certain land marks, where such street or streets may not be convenient to determine the said distances or extent from; and also to determine the size, direction and form of all sluice-ways to be left open in the said wharves so hereafter to be built or extended in the aforesaid river within the borough aforesaid, which determination and limitation, made by the aforesaid viewers, or any four of them, shall be recorded in the town books, with the particular distances and limitations from the said street or streets or other certain land marks, at large expressed, that all persons may govern themselves accordingly. And if any person or persons whatsoever, at any time after such determination and limitation shall be made and recorded as aforesaid, shall build or extend any wharf, wharves or landing places, filled up with mud, earth or other materials solid from the foundation, into the aforesaid river, further than by such determination and limitation they shall be allowed to do, or shall neglect or refuse to put or leave such sluice-way in the said wharves or landing places in the proper place thereof, according to such determination and limitation aforesaid, then every such person or persons, builder or builders being thereof convicted in any Court of General Quarter Sessions within this government, shall for every such offence severally forfeit and pay the sum of one hundred pounds, besides the costs of prosecution, one moiety thereof for the use of the said borough, and the other moiety for the use of the person or persons that shall sue for the same; and the same wharf, extended beyond the limitation aforesaid, may and shall be abated and removed by the burgesses and assistants for the time being.

50 Regulat'n  
of wharves,  
&c.

51 penalty for  
building con-  
trary to regu-  
lation

Sect. 30. *Provided always*, that nothing herein contained shall prevent or hinder, or be construed to prevent or hinder, any person or persons whatsoever being the owners of ground bounded on Christiana river, within the said borough, from building, making, erecting and carrying out a wharf or wharves thereupon, constructed in the following manner; *That is to say*, to be raised on piles of wood to be placed in rows, in the same direction with the sluice-ways, at the distance of ten feet the one row from the other; so always, that the same wharves do not extend into the said river so far as to obstruct the navigation thereof, but leave the channel of the same in all places one hundred feet in breadth at the least.

52 Wharves  
erected on  
piers

53 Public Act    Sect. 32. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all Judges and Justices and other persons whatsoever, without specially pleading the same.

*Passed June 13, 1772.*

1790    *AN ACT for the better regulation of the borough of Wilmington.*

Whereas in and by an Act of Assembly, passed the thirteenth day of June in the year of our Lord. one thousand seven hundred and seventy-two, entitled "An Act for the better regulating the wharves, public streets, buildings, party walls and partition fences, in the borough of Wilmington in the county of New-Castle, upon Delaware, and for raising money on the inhabitants of the said borough for the public use and benefit thereof," it is among other things enacted, "that all the streets and squares of said borough, shall be and remain as they are now laid out and regulated, agreeably to a map or plan of said borough, made from an actual re-survey thereof, and signed by order of the burgesses and assistants of said borough, by John Stapler esq. Griffith Minshall and William Poole, gentlemen," which is hereto annexed: *And whereas* the said map or plan of the said borough of Wilmington therein referred to, by some accident hath been lost or destroyed, so that the same by the most diligent search cannot now be found or obtained; and as it is of great importance to the inhabitants of the said borough, that some certain map or plan should be established, to which they may have reference, in laying out, extending and regulating the streets, lanes and alleys of the said borough. *And whereas* a new map or plan of the said borough has been prepared under the direction of the burgesses and assistants, and with the assent of the inhabitants of the said borough in town meeting expressed; which said map or plan is now produced, and from the best evidence that can be obtained, is conformable and agreeable to the said map or plan referred to, in the before recited Act; therefore,

54 Map of  
Wilmington  
(67)

(a) subse-  
quent map  
(67)

Section 1. The map or plan of the said borough of Wilmington, signed by order of the burgesses and assistants of the said borough, by Joseph Warner and Samuel Nichols esquires, the present burgesses, with the seal of the said corporation affixed and which is hereto annexed, shall hereafter be deemed and taken to be the true map, plan or ground plot of the said borough; and all the streets and squares, lanes and alleys of the said borough shall be and remain, as they are now laid out by the said map or plan, (a) with such extensions and alterations, as may hereafter be made in virtue and by the authority of the before recited Act.

*And whereas* in and by the thirteenth section of the before recited Act it is further provided "that before any of the said streets so extended or laid out shall be opened, the owner or owners of the ground, over which the same shall be laid, shall be paid or tendered the value of the said ground," to be ascertained in the manner therein directed: *And whereas* the value of the ground, through which a street is extended or laid out, is generally very much advanced by opening a street through the same, it appears more just and equitable, that the owner or owners of such ground should be

compensated in damages according to the real injury they may sustain, rather than by receiving the value of the said ground.

Sect. 2. Before any of the said streets so extended or laid out by virtue of the said recited Act shall be opened, the owner or owners of the ground, over which the same shall be laid, shall be paid or tendered such damages, as they shall respectively be entitled to have, to be adjudged of and determined by three impartial freeholders of the county in the same manner as is prescribed by the said recited Act for the ascertaining the value of such ground. *And whereas* the keeping of pumps and wells in good repair will be of great use and service in extinguishing fires which may happen within the said borough, and many of the pumps and wells in the streets and alleys have greatly neglected and suffered to lie long out of repair by their respective owners ;—

55 Damages  
before open-  
ing streets  
(49)

Sect. 3. The corporation of the said borough are hereby further empowered, when they shall think proper to agree with the owner or owners of all or any of such pump or pumps and wells, as are already fixed in the streets and alleys of the said borough, which pump or pumps and wells after such agreement made with the owner or owners thereof, shall forever after become the property of and belong to the said corporation, to be maintained and kept in repair at the public charge. And the said corporation are further empowered and directed to inquire into the condition and take care of the repair of the several pumps and wells within the streets and alleys of the said borough ; and if after due inquiry it shall appear that any of the said pumps or wells have been out of repair for the space of three months next after notice thereof given, by one of the burgesses to the owner or owners of such pump or well, then and in such case every such pump or pumps and well or wells shall forever after become and be the property of the said corporation, to be maintained and repaired at the public charge.

56 Purchase  
of pumps

57 forfeiture  
of pumps

Sect. 4. It shall and may be lawful for the burgesses and assistants of the said borough, and they are hereby authorized and required on complaint made by any two or more inhabitants thereof, that any nuisance or nuisances have been erected or are continued within the said borough, which may prove injurious to the health of the inhabitants thereof, to view and examine the same ; and if on such view and examination it shall be adjudged by the said burgesses and assistants or a majority of them, that the matters and things so complained of are a nuisance or nuisances, whereby the health of the inhabitants of the said borough is or may be injured, then and in such case it shall be lawful for the said burgesses or either of them, and they are hereby required forthwith to issue a warrant under hand and seal, directed to any constable of the said borough, commanding him forthwith to notify the owner or occupier of the premises, whereon the same may be erected or continued, to abate and remove the same within five days after such notice ; and if the said owner or occupier shall not remove the same within the said time, then it shall and may be lawful for the said burgesses or either of them to issue a warrant under hand and seal, directed to any constable of the borough commanding him forthwith to abate and remove the same nuisance or nuisances, whereupon the constable, to whom the said warrant may be delivered, shall

58 Nuisances

[15]

forthwith proceed to abate and remove the same, and the costs and charges of such abatement and removal shall be ascertained, determined and adjudged by the said burgesses and assistants or a majority of them, and shall be levied and recovered from the said owner or occupier by distress and sale of his or her goods and chattels, by warrant under hand and seal to be issued by the said burgesses or either of them.

59 Paving of  
foot-ways

Sect. 5. It shall and may be lawful for the burgesses and assistants of the said borough, and they are hereby authorized and empowered, when in their discretion they shall deem it proper and right so to do, from time to time on the application of any five resident freeholders of the said borough, to issue their precept to any suitable person or persons, authorizing him or them to cause the footways and gutters of any street, lane or alley of the said borough, as applied for, to be paved with bricks or stones, as the case may require, and to fix plank or curb stones to prevent the same from being injured by carriages, agreeably to the true regulations of the streets, lanes and alleys of the said borough.

{65. 67)

*Provided always*, That the greater part of the space required to be paved, shall be built upon and improved: *And provided also*, That all and every owner or owners shall have the privilege of paying their own fronts as aforesaid, so that they have it completed within two months after notice given by the person or persons authorized to pave as aforesaid, by writing under his or their hands: *And provided further*, That no person or persons shall be obliged to pave any footway to a greater breadth than four feet in front of any lot whereon a dwelling-house shall not be erected: *And provided further*, That the said burgesses and assistants, when in their discretion they shall deem fit and proper, may at any time revoke the authority given by virtue of any such precept or precepts as aforesaid, to any person or persons authorized as aforesaid.

60 Expenses

Sect. 6. The person or persons authorized as aforesaid shall previous to his or their entering on the duties required by this Act make an estimate of the expenses, and apply by written notice to the several owners of lots and buildings within the space required to be paved for their respective proportions; and in case any owner or owners shall neglect or refuse to pay such amount within twenty days after notice as aforesaid, it shall and may be lawful for the person or persons authorized as aforesaid to borrow the same, and the neglecting owner or owners shall be accountable to him or them for the amount so borrowed, with legal interest thereon when and as soon as the duties required of him by this Act, are performed.

61 Persons  
having care of  
ground of in-  
fants or ab-  
sent persons  
to pay

Sect. 7. In case any grounds or buildings belong to a minor or minors or absent person or persons, then the same shall be recovered against any person or persons having the care of such grounds or buildings belonging to such minor or minors, or absent owner or owners; and the receipts of such person or persons authorized to pave as aforesaid shall be good vouchers to all executors, administrators, guardians, trustees or attorneys, against their principal; and where any owner or owners of any grounds or buildings, executors, administrators, guardians, trustees or attorneys

cannot be found, or in case any of them neglect to pave their own fronts, or to pave the proportion respectively allotted to them, then it shall and may be lawful for either of the burgesses of the said borough, or any Justice of the Peace resident in the said borough to issue execution for the same, in the name of the person or persons authorized as aforesaid, to be levied on the grounds or buildings of such absent owner or owners, executors, administrators, trustees, guardians or attorneys, and the person or persons so authorized as aforesaid is and are hereby authorized to sell the same at public auction for the shortest space of time in which the rents and profits will satisfy the debt and costs.

Sect. 8. In case any owner or owners of any grounds or buildings, or the person or persons having the care of any grounds or buildings, as executors, administrators, guardians, trustees or attorneys shall be in arrear on a final settlement of the accounts, and neglect or refuse to pay the same, it shall and may be lawful for the said person or persons authorized by the burgesses and assistants as aforesaid, to recover the same with costs, as debts of the same amount are by law recoverable.

Sect. 9. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all Judges and Justices and all persons whatsoever, without specially pleading the same.

62 Persons in arrear on settlement

63 Public Act

AN ACT to vacate and discontinue the street called Water-street in the borough of Wilmington, from Market-street westwardly to the line of the said borough and for other purposes.

1801

Section 1. [By this section, as modified by Act of Jan. 23, 1806 to repeal part of this Act, the burgesses and assistant burgesses are authorized to vacate and shut up Water street from Orange street westwardly, (compensation being made to the owners of lots as provided in this section). By section 2, the burgesses are authorized to sell the ground of said street so vacated, and the receipt of the treasurer of the borough countersigned by the town clerk and entered in the public books or minutes of the borough, or a copy of such entry, is made sufficient evidence of title.]

64 Part of Water street vacated

& to be sold

Sect. 3 And whereas by an ordinance of the freemen, resident inhabitants of the borough of Wilmington, in general town meeting legally called and met, entitled, "An ordinance to establish the regulation of the ascents and descents of the streets, lanes and alleys, within the borough of Wilmington, and for other purposes," reciting, that whereas by an Act of the General Assembly of the State of Delaware, passed in the year 1799, entitled "An Act for the better regulation of the borough of Wilmington," amongst other things it is provided, "That it shall and may be lawful for the burgesses and assistants of the said borough, and they are hereby authorized and empowered, when in their discretion they shall deem it proper and right so to do, from time to time on application of any five resident freeholders of the said borough, to issue their precept to any suitable person or persons, authorizing him or them to cause the footways and gutters of any street, lane or alley of the said borough, as applied for, to be paved with bricks

65 Ordinance for regulation of ascent & descent of streets

page 686

or stones, as the case may require, and to fix plank or curbstones, to prevent the same from being injured by carriages, agreeably to the true regulation of the streets, lanes and alleys of the said borough. *And whereas* no regulation of the streets, lanes and alleys of the said borough, hath as yet been established, showing the ascents and descents of the streets, lanes and alleys and the relative situation thereof one with another, whereby the provisions in the aforesaid recited Act cannot be legally performed or complied with. *And whereas* the regulators of the streets, &c. for the time being have exhibited a ground plan of the said borough, noting the degrees of ascent and descent of the several streets, lanes and alleys, and the relative situation of each of them; which plan and regulation being examined and maturely considered by the present burgesses and assistants, and by them approved: *It was ordained* that from and after the passing of this ordinance, the aforesaid regulation of the streets, &c. beginning at a large stone in the center of Market and Chesnut streets, and from thence to the center of the several streets, &c. where they cross each other at right angles, showing the degrees of elevation and descent of the several streets, &c. and their relative situation to each other, a plan whereof together with explanatory notes of the particular ascents and descents of the several streets, &c. from the said large stone in Market and Chesnut streets, is deposited in the archives of this borough, and a copy of the aforesaid explanatory notes is attached to this ordinance, the same shall be, and is hereby declared to be the true regulation of the streets, lanes and alleys of the borough of Wilmington, and at all times hereafter shall be deemed and taken as such."

*And whereas it was further ordained by the authority before recited*, "That the footways and pavements of the several streets, lanes and alleys within this borough shall be, when paved, of the following width from the true range and extreme limits of each street to the outside of the curb, that is to say, King street, from the south side of Second street, Wood street and Water street shall have their pavements of the width of six feet, and no more; and all those streets, lanes and alleys which are forty-nine feet in width, shall have their pavements twelve feet wide and no more; and all those streets, lanes and alleys which are of greater width than forty-nine feet shall have their pavements twelve feet and nine inches wide and no more, except High street from Market to Pasture street, the pavement whereof shall be twelve feet wide and no more, in order to accommodate the market-house, whenever it may be necessary to extend it; and all footways and pavements twelve feet wide and upward, shall ascend from the curb stones to the true line for building at the ratio of half an inch to each foot and no more."

*And it was further ordained by the authority before recited*, "That the bottom of the gutters in all the streets, lanes and alleys within the borough, of forty-nine and a half feet wide and under, shall be ten inches below the center of said streets, lanes and alleys, and that the bottom of the gutters in all the streets, lanes and alleys within the said borough, which exceed forty-nine feet and six inches in width, shall be twelve inches below the center of said streets,

&c. and no more, *provided* that this rule be not considered to be rigidly observed in the several streets running eastwardly and westwardly which are necessarily, by the plan of regulation, higher on one side than the other, but that the regulators for the time being be enjoined to conform to it as nearly as circumstances may admit."

*And it was further ordained by the authority before recited, "That the curbs of wood or stone, placed to support the edges of footways or pavements from the gutters, and to protect the same from carriages, &c. in the several streets leading from Chesnut street to High street shall be of the height of eight inches from the bottom of the gutter, and in the same streets from High street to Water street, the curbs shall be of the height of ten inches from the bottom of the gutter and no more; and all the streets running at right angles and crossing the aforesaid streets leading from Chesnut to Water street, shall have their curbs elevated six inches above the bottom of the gutter and no more."*

*And it was further ordained by the authority before recited, "That no stoop or step to ascend into any buildings now erected or hereafter to be erected adjoining any of the streets, lanes or alleys of this borough, nor any doors or other inlets into cellars now erected or hereafter to be erected, shall extend further from the front or line of building and erecting houses than three feet and three inches on Water street, Wood street and King street, to the south side of Second street, and in all the other streets, lanes and alleys within the borough, the said steps, porches, cellar doors, or other inlets to the respective buildings thereon erected or hereafter to be erected, shall not extend on the pavement from the true line for building further than four feet."*

*Be it therefore enacted by the authority aforesaid, That so much of the said ordinance as herein recited, shall be and remain unalterable; and that it shall not be lawful for the burgesses and assistants of the said borough to repeal the said ordinance; and that the said regulations of the streets, lanes and alleys of the said borough shall not be subject to any alteration by any future surveyors or regulators, any thing in any Act of Assembly to the contrary in any wise notwithstanding.*

66 Establish-  
ed

*Passed at Dover, January 24, 1801.*

**AN ACT** for the better regulation of the borough of Wilmington and for fixing the ascents and descents of the streets and alleys within the same.

1822

Whereas in and by an Act of Assembly passed in the year of our Lord one thousand seven hundred and ninety-nine, entitled, "An Act for the better regulation of the borough of Wilmington," it is among other things enacted "that the map or plan of the said borough of Wilmington, signed by order of the burgesses and assistants of the said borough, by Joseph Warner and Samuel Nichols, esquires, the present burgesses, with the seal of the said corporation affixed, and which is hereto annexed shall hereafter be deemed and taken to be the true map. plan or ground plot of the said

(51)



borough, and that all the streets and squares, lanes and alleys of the said borough shall be and remain as they are now laid out by the said map or plan, with such extensions and alterations as may hereafter be made by virtue of an Act of Assembly passed in the year of our Lord, one thousand seven hundred and seventy-two :” And whereas, it has been found in some cases impracticable to regulate the ascents and descents of the streets in the said borough, conformably to the said map or plan, and in other cases very injurious to the property of individuals : And whereas a new map or plan of the said borough has been prepared under the direction of the burgesses and borough council, on which are distinctly marked out and laid down all the ascents and descents of the streets and alleys in the said borough that are already opened southward from Chesnut street and Market street, northward of Chesnut to Washington ; which said map or plot has been agreed to by the inhabitants of said borough in a general town meeting called for the purpose of considering the same ; Therefore—

67 Map of the  
borough

Section 1. The map or plan of the borough of, Wilmington, signed by order of the burgesses and borough council of the said borough by Robert Porter and James Sorden the present burgesses, with the seal of the said corporation affixed and which on the fifth day of January, 1822, was submitted to the consideration of the inhabitants of the said borough, and by them approved in public town meeting, shall hereafter be deemed and taken to be the true map or ground plan of the said borough ; and in future the streets and alleys of the said borough southward of Chesnut street shall be regulated and made conformably to the said map or plan and to the ascents and descents laid down and marked thereon.

68 Powers of  
burgesses &  
council, as to  
streets

Sect. 2. It shall and may be lawful for the burgesses and borough council of the said borough by ordinances passed for the purpose to regulate and fix the ascents and descents of all the streets and alleys within the said borough, the ascents and descents of which are not marked and laid down in the aforesaid map or plan: *provided always* that the said ordinances shall first be sanctioned and approved by the citizens of the said borough in general town's meeting assembled.

69 Map re-  
corded

Sect. 3. It shall be the duty of the burgesses and borough council of the said town, and they are hereby required and directed to cause the map or plan laid before the General Assembly at the time of passing of this Act, and signed by Robert Porter and James Sorden burgesses of the said town, and approved by the inhabitants of said town in a general town meeting held on the fifth day of January, eighteen hundred and twenty-two, to be recorded in the Recorder's office in the town of New-Castle ; which, when recorded, shall be deemed and taken to be a public record.

*Passed at Dover, January 24, 1822.*

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[The figures in the index are of the pages. The numbers of the marginal notes are not in the index; but the numbers in the margin included in parenthesis or brackets refer to the numbers of marginal notes; viz. if number merely be included in a parenthesis or bracket, the reference is to the given number under the same title; when the reference is to a number under a different title, the name of the title, as well as the number, is included in the parenthesis or bracket.]

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