Extract from the letter of R. K. and J. B. Hines, Esq'r's., to the Author, dated Macon, September 9, 1815.

Dear Sir:—We have, in compliance with your request, examined carefully the collection of Legal Forms, compiled by yourself. Every lawyer in the State must have felt deeply the necessity for such a work. The compilations of English Forms, which we have been forced by necessity to use, are, in many cases, entirely unsuited to our practice, and we are frequently compelled to rely upon our inventive powers, to adapt them to the changes which our Constitution and Statutes have introduced. The work before us supplies, in our opinion, the much-needed desideratum: it contains a full and complete collection of Precedents, admirably suited to the course of practice in our Courts; and while it will be a valuable manual to the profession, will, at the same time, bring the knowledge of the course of legal proceedings within the reach of every man of business.

Extract from the letter of General Eli Warren, to the Author, dated Perry, September 30, 1815.

Dear Sir:—I have examined, as carefully as my time would permit, not only the Chapter on Evidence, to which you desired my particular attention, in the Compilation of the Statutes of force, accompanied with suitable Legal Forms, which you propose soon to present to the public, but the whole book; and I do not hesitate to say that it is most admirably arranged, and is decidedly the best work for the accomplishment of the object contemplated by it, that I have ever seen offered to the public; for, while it will be of essential use to the legal profession, it will be more useful to the farmer, the merchant, the mechanic, and indeed to all classes of our citizens, furnishing as it does, to the working-classes of the community, not only the Statutes of the State, but all the Legal Forms that they may find necessary, in conforming to, and carrying out, those Statutes, in all the business of life, without subjecting them to the trouble and expense of calling on gentlemen of the legal profession, for aid in those matters which your Book will enable them readily to do themselves, and I cannot too strongly commend it to them.

Extract from the letter of Major James M. Kelly, to the Author, dated Perry, October 2, 1815.

Dear Sir:—I have examined the printed section of your Analysis of the Statutes of force in this State, accompanied by appropriate Forms, the Rules of Court, and occasional legal maxims, taken from works of standard authority in our Courts, and I do not hesitate to say that it excels any compilation of the kind ever heretofore presented to the people of Georgia.

It will be an essential legal companion to all classes of business men, and especially those who are in any way connected with the administration of the laws.

To those who make law their study and practice, it will afford facility and despatch, in the transaction of professional business; in furnishing suitable and correct Forms, in almost every possible case, with a faithful copy of the laws and rules of practice, arranged under proper heads: while, to all other classes of the people, it cannot fail to be of great value, as a general assistant and counsellor.

In cases arising in Justice’s Courts and before Magistrates, it will be of singular use and advantage, even to the commonest citizen, affording the amplest instructions, as to his rights and the means of their preservation.

To the County Officer of every grade, it will be of indispensable use; nearly half the criminals of the country, who escape trial and punishment, owe their impunity to a want of legal form in their arrest, examination and commitment; many vexatious and expensive law-suits have arisen, and numerous losses been sustained, in consequence of errors committed in the draft of legal instruments; these evils your work is eminently fitted to remedy, in future.

In conclusion, allow me to say that, for the reasons given, with numerous others, the mention of which would exceed the limits of a letter, I consider your “Analysis” a work of the first importance and necessity to the whole people, and one which the Legislature ought to diffuse amongst them, through the public officers of each and every County.
TESTIMONIAL.

Extract from the letter of Barnard Hill, Esq., to the Author, dated Talbotton, October 18, 1845.

Dear Sir:—While at Macon Court, I had, as you recollect, but a slight opportunity of examining your work; but, from what I saw, I think you will render good service to the profession and especially to judicial officers, to have the same published. Will not the Legislature take a copy for each judicial officer in the State?

Extract from the letter of Peter E. Love, Esq., Solicitor General of the Southern Circuit, to the Author, dated Hawkinsville, October 20, 1845.

Dear Sir:—In accordance with your request, I have examined the Chapters in your Compilation of the Statutes, on Grand Jury, and Arraignment and Trial. I think the above Chapters full and correct, particularly the latter, and although it may be somewhat out of order for me to speak of the merits of the Book, yet I must say that I like the arrangement of the work, and think that it will be very useful to the people generally, and of great convenience to the bar. I sincerely hope you may meet with such encouragement, from all quarters, as will enable you speedily to conclude the work, and to present it to the country.

Extract from the letter of Colonel George R. Hunter, to the Author, dated Knoxville, October 20, 1845.

Dear Sir:—I have examined, with great pleasure, your Compilation of the laws of the State. The numerous Statutes are well arranged, and the Forms with which they are interspersed so presented as to afford an immediate and easy reference. That it will prove a highly useful and popular work, I have not the slightest doubt; you have my best wishes for its success.

Extract from the letter of the Hon. James J. Scarborough, to the Author, dated Perry, October 24, 1845.

Col. Conn:—I have, with some care and attention, examined your Compilation of the various Statutes of this State, up to the present period, and the Forms accompanying them, and take great pleasure in bearing my humble testimony in favor, not only of the general usefulness of such a work, but also to the absolute necessity for such a one. In everything of the kind heretofore offered to the public, there has been very many deficiencies, imperfections and errors in the forms. In your Compilation, I am of opinion, you have invariably correctly recited the Statutes, and that the several Forms you lay down, are neither deficient, on the one hand, nor onerous, on the other. The Justices of the Inferior Courts and of the Peace, Clerks, Sheriffs, Constables, Executors, Administrators, Guardians, and in fact, all the officers of the State, will find your Compilation an important and unrerring guide, to lead them in the way of their respective duties. The young practitioner of the law will also find in your Book, much to improve and instruct him. The Forms of Declaration in Attachment; Rules Nisi and Absolute against Sheriffs; Rules of foreclosure of Mortgages upon real property; Collateral Issues joined, &c. &c., will be highly instructive and useful to junior members of the profession, as well as matter of much safety and convenience, to those more experienced.

Extract from the letter of Colonel G. M. Dudley, to the Author, dated Americus, November 8, 1845.

Dear Sir:—I have had but little opportunity to examine your Compilation of the Laws of Georgia, and the forms adapted to their practical enforcement. The plan is entirely new with us, and promises, I think, great usefulness, not only to the young practitioner in our profession, but to the inferior judicial tribunals and their ministerial officers. In my judgment, it is immeasurably superior to anything of the kind which has ever yet been offered to the attentive consideration of the people of Georgia. It is only necessary, I apprehend, that the Legislature should become acquainted with the merits of the work, to insure for it that amount of favor which shall place it in the hands of our majesty. It is also believed, that our merchants, and other men of business, will find it a store of valuable information, which they cannot conveniently derive from other sources. With the
hope that you may reap an adequate reward for your patient and well-directed labors, in preparing the work, I remain, with great respect, &c.

Extract from the letter of Edwin R. Brown, Esq., to the Author, dated Americus, October 8, 1845.

Dear Sir:—I have fully examined your Analysis of the Laws of Georgia, with the Forms and Notes to the same. I consider it a work of the first importance to the bar, and to all officers of the State, and to the citizens at large. The work is planned and executed with great correctness and ability; indeed it should be found in the hands of every lawyer, and officer, and man of business. I cannot too highly recommend the work to the prompt consideration of the Legislature, as its distribution among the magistrate of the State would, in my opinion, conduce more to the correct and efficient administration of the laws, in the inferior tribunals, than any work that has ever appeared in this State, or in the whole South.

Extract from the letter of Judge C. B. Strong, to the Author, dated Macon, December 4, 1845.

Dear Sir:—There is nothing more certain, than that in all well-regulated States, the people and their officers, should have every possible opportunity of knowing the laws by which they are governed, and the manner in which they may be carried into practical effect. He who promotes such objects, may well be considered a public benefactor.

I have, agreeably to your request, examined the first nine Chapters of your Compilation of the Statutes of Georgia with Forms, and glanced through the work, and state, without hesitation, that your Compilation of the Statutes, with the Forms, if placed in the hands of the Justices of the Inferior Courts, Justices of the Peace, Clerks and Sheriffs, and indeed, in the possession of the people themselves, will effect more to attain the first-mentioned desirable object, and entitle you to the honorable appellation of the other, than any effort of the sort I have before witnessed in Georgia. That your praiseworthy labors, in so useful a cause, may be duly appreciated, is my sincere wish, &c.

Extract from the letter of Colonel Henry G. Lamar, to the Author, dated Macon, November 13, 1845.

My Dear Sir:—I have examined the copy of your Compilation of a part of the Common and Statute Laws, now in force in Georgia, with the Forms applicable to them. A superficial observation only, is required to appreciate the arduous labors you have devoted to the work. A critical examination of its contents has satisfied me of the ability, minuteness and exactness of its execution. I hesitate not to say, that it will be a useful acquisition to the library of any private gentleman, and must be eminently useful to the different officers of the State, as well as the members of the legal profession.

Extract from the letter of Colonel Amos W. Hammond, to the Author, dated Colloden December 10, 1845.

Dear Sir:—As much time as I could spare, apart from professional engagements, has been pleasantly devoted to the examination of your Book of Statutes and Forms, submitted to me for that purpose. This Book supplies a want long and extensively felt by the profession. Such a Book, the emergencies of business, and particularly the circuit, always require: it is so very well arranged, (now that I have seen it,) I do not know how I could do without it. I have no doubt, when you have it ready for delivery, that an extensive sale of it will satisfy you how much the want of such a Book is felt, and how much its usefulness is appreciated by our profession.

Extract from the letter of Judge Angus M. D. King, to the Author, dated Forsyth, November 14, 1845.

Dear Sir:—I have, as you know, from time to time, examined your Analysis of the Laws of Georgia, with the accompanying Forms, while the work itself was in manuscript.
and while your labor of selecting and compiling was in progress. It gives me pleasure, now Sir, to say, that a re-perusal of the same, since it has been put in print, fully confirms the high opinion I had formed of its utility. The rules and principles of law which you have added, from several standard authors, will very much enhance its value, more especially in the hands of those who have business of various sorts to transact, and who have not ready access to the works you have consulted, nor time to look through them, even if they were at hand. I have also been gratified to hear from several gentlemen, belonging to the class just mentioned, expressions of opinion strongly in confirmation of my own, and of desires to see your work introduced into general use; indeed, so far as I have heard, or so far as I believe, there is but one opinion upon this subject.

The diffusion of your Book will tend to the diffusion of correct knowledge upon subjects of importance, and at the same time, also, to the improvement of the business capacities of those who may use it. I am of opinion that it ought to be found in the house of every officer, and every man of extensive business, in the State.

Extract from the letter of Charles H. Rice, Esq., to the Author, dated Macon, October 25, 1845.

DEAR SIR:—I have given to your work, especially that portion treating of estates, a careful examination, and from an experience of ten years as Clerk of the Court of Ordinary, I feel the more confidence in giving my opinion of the great value of that portion of the work, as a safe guide to Administrators, Executors and Guardians, and not less so to our Courts of Ordinary. On the whole, I think the work calculated to be beneficial to all classes of our people.

Extract from the letter of Z. E. Harman, Esq. to the Author, dated Forsyth, February 4, 1846.

DEAR SIR:—Your Analysis of the Laws of Georgia, which you did me the honor to submit to my perusal, has been carefully and attentively examined.

I consider the work, in its plan and arrangement, as well as in its more minute features, to be well adapted to the purposes for which it was compiled. As a book of reference, I think it will be found convenient to the legal profession, and to the numerous civil officers in the State, will be highly valuable. The various Forms contained in the work, (the correctness of which I think unquestionable,) must contribute, in no small degree, to its usefulness. A work of this kind has long been needed in Georgia, and I am pleased that the deficiency has been so well supplied. In conclusion, permit me to say that my entire approval of the work is cheerfully given. With the hope that your labors may be duly appreciated, and receive from the public the reward they so highly merit, I am, &c.

Report of the Committee appointed by his Excellency the Governor, in conformity with a Resolution of the Legislature.—Pamp., 1845, p. 204.

To His Excellency, GEORGE W. CRAWFORD, Governor of the State of Georgia.

SIR:—In pursuance of an Executive appointment, made on the 10th of January, 1846, appointing the undersigned a Committee "to report upon the Form Book of Howell Cobb, Esquire, according to the resolution of the last General Assembly," we have the honor to report to your Excellency, that we have examined the entire work, and with the alterations and amendments suggested by us, and cheerfully accepted by the Compiler, take pleasure in stating to you its general "correctness and faithful execution," and have no doubt it will prove a valuable assistant to the people of the State, who are unacquainted with legal forms, especially county officers.

We have the honor to be most respectfully, your obedient servants,

HIRAM WARNER,
NATHAN C. SAYRE,
WILLIAM S. ROCKWELL.

Executive Department, Milledgeville, March 28, 1846.
The above is a true copy of the original letter on file in this Department.

J. U. HORNE, S. E. D.

Executive Department, Milledgeville, March 28, 1846.
The committee heretofore appointed to examine and report on the correct and faithful execution of the Compilation of the Laws of Georgia and Legal Forms, by Howell Cobb, Esquire, having discharged their duty, and reported favorably: it is ordered, in compliance with a resolution assented to on the 29th December, 1845, that the State's subscription to said work be for two thousand copies.

A true extract from the minutes.

J. U. HORNE, S. E. D.
ANALYSIS
OF THE
STATUTES OF GEORGIA,
IN GENERAL USE,
WITH THE
FORMS AND PRECEDENTS
NECESSARY TO THEIR PRACTICAL OPERATION,
AND AN
APPENDIX,
CONTAINING THE
DECLARATION OF INDEPENDENCE; THE ARTICLES OF CONFEDERATION; THE CONSTITUTION OF THE UNITED STATES; THE CONSTITUTION OF THE STATE OF GEORGIA; GENERAL WASHINGTON'S FAREWELL ADDRESS, AND THE NATURALIZATION LAWS PASSED BY CONGRESS.

BY HOWELL COBB,
OF HOUSTON COUNTY, GEORGIA.

NEW-YORK:
PRINTED BY EDWARD O. JENKINS,
No. 114 Nassau Street.
1846.
Entered according to the Act of Congress, in the year 1845, by

HOWELL COBB,

In the Clerk's Office of the District Court of Georgia.
PREFAE.

In this Compilation, as is indicated in the title page, no other Acts, but those in general use, are retained; all of a private or local character are rejected; this plan the Compiler was forced to pursue strictly, or run the hazard of swelling the volume beyond a reasonable size. For the same reason, the Compiler had to drop the Titles and the repealing clauses of the statutes retained: the first of these can scarcely be necessary but when the constitutionality of the Act itself may come in question, (a difficulty which the Compiler has studiously avoided,) then, reference may be had to the Act, as originally passed and published.

The Compiler could not prepare and better express the intention of this Compilation, than it is prepared and expressed, in the Report of the Committee, appointed by the Legislature, for the examination of the work. In their Report, the Committee say: "The first feature of the work which arrests the attention is, its being divided into Chapters, there being fifty-one in number (since the Report was made, the Legislature organized the Supreme Court—that Act forms the first Chapter and consequently there are now fifty-two Chapters). These Chapters divide the Statutes into so many different subjects; each Chapter contains the entire Statutes, and sections of Statutes, which relate to the subject of the Chapter. Whenever an entire Statute is retained, at the close of it reference is made to where it may be found, either in Prince's Digest or the Pamphlet Acts passed since its publication. The same rule is observed with regard to the sections of Statutes, the figure at the commencement of the section indicating the number of the section. Whenever an alteration has been made in a previous Statute, by the passing of a subsequent one, the alteration is inserted in Italic letters, and what it has been altered to, is inserted in small capital letters; by which means the amendment is readily perceived. In addition, the Compiler has inserted, in some of the Chapters, some of the most obvious common law rules, from standard works, always giving the author and the page, at the close of the inserted rule, to which reference can be easily had, by those who may wish to examine the subject at large.

"The next feature of the work which claims attention, is the Forms and
Precedents; these are admirably arranged, in each Chapter, and form a large portion of the work, and perhaps in practice, its most valuable part. The Compiler has interspersed notes of direction wherever they were deemed necessary, to direct the draftsman in the use of the Forms: so that the Statute Laws of the State are rendered, by his Compilation, easy to be understood, by the most humble capacity: indeed, the Committee cannot conceive of any plan that could possibly make the Laws of easier comprehension, and are decidedly of opinion that they are incapable of greater simplicity and method.

"Its usefulness and adaptation to the wants of the people, have been attested by several distinguished gentlemen of the legal profession, to whom copies of the work have been submitted, who with different bodies of Grand Juries, strongly recommend its encouragement by State subscription."

This work pretends to be nothing more than a simple Compilation, no higher merit is claimed for it; in the execution of which the Compiler availed himself, without reserve, of the labors of others, and feels gratified in being able to say that he had the labors of such men as Schley, Clayton, and Lamar, to apply to, in its accomplishment; and the aid of those (and others) whose names appear in the Testimonial, to revise and correct what he had done: To those last alluded to, the Author now feels and must always feel grateful, for their kindness, and he cannot permit this occasion to pass without tendering them his profoundest thanks.

With regard to the design of this work, (however imperfectly its execution may have been performed,) the Compiler must beg the Reader's indulgence while he states, that it was and is entirely new to him, having never seen nor heard of a similar undertaking. It ought to be remembered that there existed no land-marks to answer as a guide; the path was new and un trodden; no pioneer had marked the way, but the Compiler had to grope his way without light or aid of any kind; and while this is remembered, it is hoped that much charity will be exercised towards the Compiler, from the fact that his motives were to do some good.

And now that several years' labor, (performed amidst the engagements of an arduous profession,) is brought to a close, the Compiler cannot but fear that many errors have escaped him and his friends; these, however, he hopes will be found to be immaterial. With the utmost reliance upon his professional brethren and a generous and indulgent public, the Compiler now submits the work.

Perry, August, 1846.
CHAPTER I.

SUPREME COURT.

An Act to carry into effect that part of the first section of the third article of the Constitution, which requires the establishment of a Supreme Court for the correction of Errors; and to organize the same, and to regulate the proceedings thereof.

1. That in pursuance of the first section of the third article of the Constitution, there shall be, and it is hereby established, a Court for the correction of Errors, to be called the Supreme Court of the State of Georgia; the said Court shall consist of three Judges, who shall be elected at the present session of the General Assembly; one for the term of six years; one for the term of four years, and one for the term of two years; during which terms they shall respectively hold their offices, unless sooner removed, in the manner pointed out by the Constitution. No person shall be eligible to the office of Judge, unless he shall have been duly admitted and licensed to plead and practice in the courts of law and equity in this State, ten years at least, prior to his election. The Governor shall, within twenty days after the election of said Judges, commission them respectively, for the terms for which they shall have been elected. In case of the death, resignation, or removal from office, of any of said Judges, the Governor shall appoint and commission some fit and proper person to fill such vacancy, until the meeting of the General Assembly next after such vacancy, when the General Assembly shall fill the same. And if any such vacancy occur during a session of the General Assembly, the same shall be filled at such session. Every Judge of said Court, who shall be elected after the present session of the General Assembly, (except where he is elected to fill a vacancy,) shall hold his office for and during the term of six years, and shall be commissioned accordingly by the Governor.

2. That the said Supreme Court shall be holden at the times and places following, to wit: on the second Monday in January and third Monday in June, in each year, for the first district, to be composed of the Eastern and Southern judicial circuits, alternately at Savannah and Hawkinsville. On the fourth Mondays in January and July, in each year, for the second district, to be composed of the Southwestern and Chattahoochie circuits, alternately at Talbotton and Americus. On the second Monday in February and August, in each year, for the third district, to be composed of the Coweta and Flint judicial circuits, alternately at Macon and Decatur. On the fourth Mondays in March and September, in each year, for the fourth district, to be composed of the Western and Cherokee circuits, alternately at Cassville and Gainsville. On the first Mondays in May and November, in each year, for the fifth district,
to be composed of the Middle, Northern and Ocmulgee judicial circuits, at the city of Milledgeville.

3. That it shall be the duty of all the Judges of said Court to attend at each term of said Court; but if from Providential cause, any of the said Judges cannot attend a Court, such Court may be holden by two Judges. If only one Judge shall attend a Court, it shall be his duty to open the Court, and to adjourn it to a day not more than two days beyond the regular term, at which time, if two Judges do not attend, the Court shall in that case be adjourned to the next regular term.

4. That the Supreme Court shall hear and determine, at the first term of each Court, all such cases, in law and equity, as may be brought from any of the Superior Courts of this State, within the district, as created by this Act, for which said Supreme Court is holden. All causes of a criminal or civil nature may, for alleged error in any decision, sentence, judgment or decree, of any such Superior Court, be carried up from the counties in the respective districts aforesaid, to the Judges of the Supreme Court, at the respective terms thereof for such district, to be by the said Supreme Court, revised and determined. Any criminal cause may be carried up to the Supreme Court on a Bill of Exceptions, in writing, specifying the error or errors of law complained of, to be drawn up by the party, his counsel or attorney, within four days after the trial of the cause in which the decision or sentence has been had, and be submitted to the Judge of the Superior Court, before whom such criminal cause may have been tried, to be by him certified and signed. Any cause of a civil nature, either on the law or equity side of the Superior Court, may in like manner, be carried to the Supreme Court, on a Bill of Exceptions, specifying the error or errors complained of in any decision or judgment, to be drawn up by the party complaining thereof, his counsel, solicitor, or attorney, within the time aforesaid, and submitted to the Judge before whom the cause may have been heard, to be by him certified and signed: but in no case shall the facts be controverted in the Supreme Court so as to require attendance of any witness or witnesses, under any pretence whatever. Said Supreme Court shall hear and determine upon matters contained in the transcript of the record of the cause, and not otherwise. Upon exhibition of any such Bill of Exceptions to the Judge of the Superior Court, it shall be his duty, if such Bill of Exceptions be true and consistent with what has transpired in the cause before him, to certify and sign the same. Such Bill of Exceptions shall operate as a supersedeas to the judgment, sentence, execution or decree, of the Court below, in all cases where bond may be given, or affidavit filed, as hereinafter provided. If in civil cases, either in law or equity, the party complaining of error shall, within four days after the term at which the Exceptions were taken, pay all costs which may have accrued, and either personally, or by his agent, solicitor, or attorney in fact, or at law, give bond with security to be approved of by the Clerk of the Superior Court, and conditioned to pay the eventual condemnation money, and all subsequent costs, and if in a criminal case, where the offence is by law bailable, the party complaining of error, shall enter into recognizance with security, to be in like manner approved, conditioned for the appearance in person of such party complaining, to abide the final order, judgment or sentence of said Court; and if the offence be not bailable, or if the party be sentenced to imprisonment in the Penitentiary, and be unable to give security as required, the Judge of the Superior Court may order a supersedeas at the time of certifying and signing the Bill of Exceptions. When such Bill of Exceptions shall have been signed and certified by the Judge of the Superior Court, and such bond with security shall have been given, or recognizance with security entered into, and costs paid, notice of the signing of such Bill of Exceptions shall be given, if in a criminal cause, to
the attorney or solicitor general, and in civil causes, in law or equity, to the adverse party, or his counsel, within ten days after the same shall have been done, and shall be filed in the Clerk's office where such bond or recognizance has been given, immediately thereafter, and on a copy of such notice being served by a sheriff, constable, or attorney of the Superior Court, and filed in the Clerk's office with the Bill of Exceptions, it shall be the duty of the Clerk of the Superior Court below, to certify and send up to the Supreme Court, a complete transcript of the entire record of the cause below, duly certified under his hand and seal of office, and also the Bill of Exceptions, within ten days after he shall have received the original notice, with the return of service thereon.

5. That the Supreme Court shall proceed at the first term, (unless prevented by Providential cause,) to hear and determine each and every cause, which may in manner aforesaid, be sent up from the court below, upon the Record and Bill of Exceptions, on the ground therein specified, and on no other grounds. Upon the decision of said Supreme Court on matters of law, or principles of equity, which may arise in the Bill of Exceptions, (which decisions shall always be in writing, and be delivered by the Judges of the said Court seriatim, except in cases where they are unanimous,) the Court shall cause to be certified to the Court below, such decision, and award such order and direction in the premises, as may be consistent with the law and justice of the case; which decision so rendered and ordered, and direction so awarded, shall be respected and carried into full effect by the Court below. If the decision and judgment of the Court below be for any sum certain, and be affirmed in the Supreme Court, the plaintiff may, in the Superior Court, enter judgment against the defendant and his securities, for the amount of principal, interest and costs, as shall have been confessed or found by a jury, and ten per cent. damages on the principal sum, and have execution immediately after the decision of the Supreme Court, so certified as aforesaid. Provided, That if any one or more of the Judges of the Supreme Court shall certify, that in his or their opinion, such cause was not taken up for delay only, then and in such case, the damages shall not be allowed. Judgments in the court below, if affirmed, shall not lose any lien or priority, by reason of the proceedings in the court above.

6. That if any Judge of the Superior Court shall refuse to certify a Bill of Exceptions, when properly tendered; or if any Clerk shall fail, or refuse to send up the transcript of the whole record in any cause, according to the provisions of this Act, or he, or any sheriff, shall refuse, or neglect to perform any duties imposed upon him by this Act, said Supreme Court, while in session in any district in this State, may issue a writ of Mandamus to such officer, and enforce obedience thereto, if necessary, by Attachment; and in case that such refusal by any such officer have delayed the party applying for, or tendering a Bill of Exceptions as aforesaid, beyond the time limited in the foregoing part of this Act, he shall not thereby lose his remedy, but may proceed as if the time limited had not expired.

7. That the sheriff of the county wherein the Supreme Court is holden, or his deputy, shall attend the sessions thereof, and obey all lawful orders, enforce all lawful commands, and execute all lawful processes, of said Court. And for the service of any process, or order of said Court, he shall receive the fees allowed for like service in the Superior Courts, to be taxed and paid in like manner.

8. That each of the said Judges of the Supreme Court shall receive a salary of two thousand five hundred dollars per annum, to be paid as the salaries of the Judges of the Superior Courts are now paid. The amount of said salary shall not be increased or diminished during the continuance of such Judge of
the Supreme Court in office; and no Judge shall receive any other perquisite, reward or compensation, than the amount of his salary. Each and every Judge of the Supreme Court shall, before the Governor of the State, and prior to his receiving his commission, take the oath to support the Constitution, and other oaths now by law required of the judicial officers of this State.

9. That the said Supreme Court shall appoint some fit and proper person as Clerk thereof, who shall hold his appointment for six years, unless removed by said Court, upon complaint made and cause shown, for incapacity, improper conduct, or neglect of duty. Said Clerk shall keep an office at the seat of government, in one of the departments of the Capitol, where all books, records and archives, and the seal of the said Court shall remain. He shall attend all the sessions of said Court, and obey all lawful orders thereof. He shall keep in substantial bound books, fair and regular minutes of the proceedings of said Court; a record of all its judicial acts; a docket of its causes, and such other books as said Court may, from time to time, order and direct. He shall certify, when required, upon payment of his fees, all proceedings of the said Court, in the manner now in use, in the Superior Courts of this State. And the record and minutes of said Supreme Court, and copies thereof, shall be evidence in the same manner and under the same circumstances, as those of the Superior Courts now are; said Supreme Court being, to all intents and purposes, a Court of Record. The Clerk shall be authorized to appoint a deputy or deputies, in his discretion, he being responsible for the faithful performance of their duties.

10. That if during the pendency of any cause in the Supreme Court, the security taken on the removal of said cause to the Supreme Court, shall become insufficient or inadequate, by reason of removal from the State, insolvency or otherwise, it shall be the duty of the Court so certifying said cause, on application, on oath, setting forth the facts showing the inadequacy of said security, from insolvency or otherwise, to require additional and other security, unless the appellant shall make an affidavit under the seventeenth section of this Act, and if the appellant shall fail, or refuse to give such additional security, or make and file such affidavit, the Court below shall certify this fact to the Supreme Court, whereupon said suit shall be dismissed at the appellant’s costs, and the judgment in the Court below shall be affirmed with costs.

11. That said Clerk shall be entitled to the same fees, as clerks of the Superior Courts in this State, to be taxed as part of the costs, and for which the attorney of record shall always be bound.

12. That some fit and proper person shall be elected by the Judges of said Court, as Reporter, who shall hold his office during the term of six years, unless sooner removed by the Court, and shall receive for his services, a salary from the State, of one thousand dollars per annum. Said Reporter shall attend all the sessions of said Court, and Report, in a proper and professional manner, all the decisions there made, with the reasons therefor, and he shall not, during his service as Reporter, appear as counsel, or act as attorney, in any case in any court in this State. The Reporter shall from time to time publish, in good and substantial forms, the Reports so made as aforesaid, and if at any time he shall neglect to publish within four months, after sessions for each year have closed the decisions of that year, he shall forfeit one-fourth of his salary for that year, and another fourth for every additional month’s delay. Provided, That if the Judges of said Court, or a majority of them, shall certify that such delay was not from any fault or neglect of the Reporter himself, or those under his control, such forfeiture shall not be incurred. The Reporter shall also be allowed the copy-right. And provided further, That he furnish, free of expense, and well bound, one copy of said Reports, to each Judge of said Court, for the time being; one copy to the Clerk of said
Court, to be kept in his office as public property; twenty-five copies to the State, to be delivered to his excellency the Governor, as soon as may be; said twenty-five copies, to be disposed of as the General Assembly may direct; and a copy to each Clerk of the Superior Court for each county in this State, to be kept in his office free for the perusal of any person.

13. That the Clerk and Reporter of said Court, before entering on the duties of their respective offices, shall be sworn to the faithful discharge of their duties, and take all other oaths prescribed by law for civil officers.

14. That the Judges of said Supreme Court shall have power to establish Rules of Practice, and to regulate the admission of Attorneys, in said Supreme Court, and to award all such process as may be necessary to enforce obedience to their orders and judgments, and as are usual in other appellate tribunals; and also to establish and procure a Seal for said Court.

15. That in case plaintiff in error shall fail to cause the transcript of the record, to be filed with the Clerk of the Supreme Court, at the place of holding said Court, by the third day of the term next succeeding, the time of granting the supersedeas, and the adverse party shall file with the Clerk of the Supreme Court a certificate of the granting of such supersedeas, signed by the Clerk of the Superior Court wherein the cause is depending, then it shall be the duty of such Supreme Court to affirm the judgment below on such certificate.

16. That it shall be the duty of the attorney or solicitor general of the judicial circuit wherein any criminal cause is tried, and which may be taken up in manner aforesaid, to appear and attend to said cause in the Supreme Court.

17. That whenever a party shall not be able to give security, he shall file an affidavit stating that he is unable, from his poverty, to give the security for the eventual costs and condemnation money, and that his counsel has advised him that he has good cause for a Writ of Error; and upon filing the same in the Clerk’s office, he shall be entitled to all the privileges which he would have had, if he had given the security and paid the costs, as required by this Act. And when any party, in any civil cause, residing out of the county in which it may be tried, shall not be desirous of obtaining a supersedeas, he shall be entitled to have his cause carried up to the Supreme Court, under the provisions of this Act, without giving bond, or making affidavit, as hereinbefore provided—the adverse party being at liberty to proceed with execution.—Act of 1845; pamp. p. 18—24.

RULES OF THE SUPREME COURT OF THE STATE OF GEORGIA.

1. All Attorneys who have been admitted to practice in the Superior Courts, may be admitted to practice in the Supreme Court on application, (provided they shall exhibit to the Court satisfactory evidence of good private and professional character, and pay to the Clerk of the Supreme Court the usual fee of Five Dollars,) who shall issue to each applicant a License, under the seal of the Court, upon each applicant taking and subscribing the following oath: I, Samuel D. Killen, do solemnly swear (or affirm, as the case may be) that I will demean myself as Attorney or Counsellor of this Court, uprightly and according to Law, and that I will support the Constitution of the State of Georgia and the Constitution of the United States—so help me God.

2. The written recommendation of any one or more respect able members of the Bar, certifying to the good private and professional character of an applicant for admission shall be sufficient evidence of character, and will in all cases be required.

3. Any Attorney from other States or Territories shall be admitted to
plead and practice in this Court, who will produce satisfactory proof, that he has been regularly Licensed in the highest Judicial Tribunals of such State or Territory, and is at the date of his application a practicing Attorney of the same.

4. A Brief of the oral and a copy of the written evidence adduced in the Court below, shall be embraced in the Bill of Exceptions and shall constitute a part of the same.

5. Every motion for any Rule, Order or Judgment, shall be submitted to the Court in writing by the Counsel who makes it, and if granted shall be handed to the Clerk.

6. No paper belonging to the Clerk’s office shall be taken therefrom, without leave of the Court, and when such leave is granted, the party receiving papers shall receipt to the Clerk for the same.

7. All cases returned to this Court shall be entered on the Bench Docket and numbered, on or before the Court meets, on the first day of the term to which they are respectively returned, and the cases first received by the Clerk shall be first entered.

8. The Clerk shall furnish a transcript of the Bench Docket for the use of the Bar, and the Bench Docket shall not be subject to inspection during the sessions of the Court.

9. All cases entered on the Bench Docket shall be called and tried in the order in which they are there entered; it shall however be competent for the Court, upon special cause shown, to set down a case for hearing out of its regular order.

10. The Attorney who makes out and tenders the Bill of Exceptions shall sign his name to the same, and shall be with counsel representing the case before this Court, bound for costs.

11. When cases are called for hearing and there is no appearance by the plaintiff in Error, the Defendant may have the plaintiff called, and move the Court to dismiss the writ, or may open the Record and pray for affirmation of the Judgment, and in case the writ is dismissed, or the Judgment affirmed, the Plaintiff in Error shall pay the costs. And should the Defendant fail to appear, then the Plaintiff shall be entitled to have him called and open the Record, and pray for a reversal of the Judgment.

12. Upon the reversal of any Judgment, order, or decree of the Superior Courts, the party in whose favor the reversal is had shall be entitled to collect, in the Court below, all the costs which have accrued in the cause.

13. Upon the Clerk of this Court producing satisfactory evidence by affidavit, or the acknowledgment of the parties, their sureties or attorneys, of having served a copy of the bill of costs due by them in this Court, on such parties, sureties or attorneys, an attachment may issue against such parties, sureties and attorneys, to compel payment of costs.

14. The counsel for the Plaintiff in Error shall furnish each of the Judges and the Reporter, with a copy of the Bill of Exceptions, and a note of the points or questions intended to be made by the respective parties, and a statement of the facts in the cause, which shall be submitted to each of the Judges and the Reporter, and the opposite party, at, or before the first day of the Term to which the cause is returned with a list of the authorities expected to be relied on. No admission or argument between the parties or their attorneys shall be binding unless the evidence thereof shall be in writing, subscribed by the party or his attorney, against whom the same shall be alleged.

15. Only two counsel shall be permitted to argue for each party Plaintiff and Defendant in a cause, and the counsel for Plaintiff in Error shall begin and conclude, reading all the authorities upon which he expects to rely, in his opening argument and in all special matters springing out of a cause at issue or
otherwise, the actor or party submitting a point to the Court, shall begin and conclude and no cause shall be argued by brief alone.

16. The Remitter shall contain a copy of the Judgment of the Court, annexed to the Bill of Exceptions and a transcript of the record of the proceedings below as brought into this Court, under the seal of this Court and signed by the Clerk, and the same shall be delivered to the party in whose favor the decision shall be made, on the payment of fees, by whom it shall be transmitted together with the Bill of costs to the Court below.

17. Whenever pending a cause in this Court, either party shall die, the proper representatives of such party may voluntarily come in and be admitted parties to the suit upon motion, and thereupon the cause shall be heard and determined, as in other cases, and if on or before the first Term succeeding the decease of a party dying there shall be no representation of his Estate, or if represented, parties shall not be thus voluntarily made, then and in either of said events, the other party may at that Term, suggest the death on the record, and thereupon on motion obtain an order, that unless such representation be had, and parties made thus voluntarily as herein before authorized, on or before the second day of the term then next succeeding, the party moving such order if Defendant, shall be entitled to have the writ of Error dismissed, and if the Plaintiff, he shall be entitled to open the Record and proceed to a hearing: provided, that a copy of every such order shall be published in one of the Gazettes at the seat of Government three successive weeks, at least sixty days before the said last named Term of the Court, or served on the adverse party thirty days before the first day of said Term.

18. No cause shall be heard until a complete record shall be filed containing in itself, without references aliunde, all the papers, Exhibits, Depositions and other proceedings which are necessary to the hearing in this Court, and all objections to the completeness of the Record shall be made in writing and verified by affidavit, on or before the third day of the Term to which the cause is returned, and in all cases when such exceptions are filed, the cause shall be considered as returned to the next succeeding Term and the Court shall on motion award a writ of certiorari, directed to the Court below, for the purpose of causing to be sent up the entire record; which writ shall be served by the party or the attorney moving the same, and shall be returned to the next Term after it is awarded: provided, that nothing herein contained shall prevent this Court, from awarding a process of contempt against any officer, in any case, when he may be considered as in default.

19. In all cases when a Bill of Exceptions has been certified and signed, a writ of Error shall be made out by counsel for the Plaintiff in Error to this Court, which shall be directed to the Judge of the Superior Court so certifying and signing, together with a citation to the Defendant in Error, to appear and answer.

20. Such writs of error shall issue in the name of the Governor of the State; shall bear teste in the name of the Judges of this Court, shall be signed by the Clerk and sealed with the seal of this Court, and shall be returnable to the next succeeding Term, and the citations shall bear teste in the name of the Judges of this Court, shall be signed by its Clerk and sealed with its seal.

21. The Writs of Error with the Citations thereto annexed, shall be filed with the Clerk of the Superior Court at the time of tendering the Bill of Exceptions; copies of which, made out by counsel of the Plaintiff in Error, shall be served on Defendant in Error or his counsel, by the sheriff of the county, or by counsel for Plaintiff in Error, within ten days from the signing and certifying of the Bill of Exceptions, and an entry of the service shall be made on the original writ by the counsel or sheriff who makes it officially;
and it shall be the duty of the Clerk of the Court wherein such Bill is signed and certified, to send up to this Court, with the Record of the cause, such original writ and citation, duly by him certified to be the originals filed in his office.

22. It shall be the duty of the Clerk of this Court to keep on hand for the use of the Bar, blank writs of error and citations, according to the form adopted by this Court, duly by him signed and sealed to be furnished to the Bar on application therefor.

23. The Plaintiff in Error shall, on or before the first day of the Term to which the writ of Error is returned, or immediately upon the filing of the record thereafter, file in the Clerk's office of this Court an Assignment of Error, and the Defendant in Error shall, on or before the second day of that Term, or within twenty-four hours after the Assignment is filed, make out and file in office, a Traverse of such Assignment: and upon failure of the Plaintiff to file his Assignment as herein required the Defendant shall upon motion be entitled to have the writ dismissed, and should the Defendant as herein required fail to file his Traverse, then the Plaintiff shall be entitled to proceed ex parte with his cause: provided, that no Error shall be assigned except such as is expressed in the Bill of Exceptions.

24.—The following shall be the form of Writs of Error, viz:

The Governor of the State of Georgia,

To the Honorable James A. Meriwether, Judge of the Superior Courts of the Ocmulgee Circuit, Greeting:

Because in the Records and proceedings, as also in the rendition of a judgment in a Cause in the Superior Court of Baldwin County before you, between John Doe and Richard Roe, a manifest Error is charged to have been committed to the damage of the said Richard Roe, as by his complaint and Bill of Exceptions by you signed and certified, appears, and we being willing that the Error complained of, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment in said cause as complained of be given, that then, under your seal, distinctly and openly, you cause to be sent the Records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the State of Georgia, together with this writ, so that you have the same at Milledgeville, on the first Monday in May next, in the said Court, to be then and there held, that the Records and proceedings aforesaid, being inspected, the said Court may cause further to be done therein to correct that Error, what of right and according to Law, should be done.

Witness, the Honorable Joseph H. Lumpkin, Hiram Warner and Eugenius A. Nisbet, Judges of the Supreme Court of the State of Georgia, this 10th day of February, 1846.


25.—Citation.

STATE OF GEORGIA.

To John Doe, Greeting:

You are hereby cited and admonished, to be and appear at a Supreme Court, to be held at Milledgeville, on the first Monday in May
next, pursuant to a Writ of Error, filed in the Clerk's office of the Superior Court of the County of Baldwin, in said State, wherein Richard Roe is plaintiff, and you are defendant in Error, to show cause, if any there be, why the Judgment in said Writ of Error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph H. Lumpkin, Hiram Warner, and Eugenius A. Nisbet, Judges of the Supreme Court of the State of Georgia, this 10th day of February, 1846.

R. E. Martin, Clerk.

26. All opinions delivered by the Judges of this Court, shall immediately upon delivery thereof, be handed to the Clerk, whose duty it shall be to record the same, and then to deliver the originals, with a transcript of the judgment or decree of the Court thereon, to the reporter.

27. The papers belonging to the causes brought before this Court, shall be handed to the Clerk in person, or transmitted to him at Milledgeville.

28. It shall be the duty of the Clerk to note the time of filing Assignments of Error, and of Traverses of such Assignments, and no cause shall be considered as ready for a hearing until entry made on the Docket of "Issue joined," which entry shall be made only in cases where Errors have been Assigned and Traversed, as provided in these Rules.

Copy of Judge Lumpkin's Commission.

STATE OF GEORGIA.

To the Hon. Joseph H. Lumpkin, Greeting:

Whereas, the General Assembly of the State aforesaid, confiding in your judgment, ability, good conduct and patriotism, did, by joint ballot of both branches thereof, on the seventeenth day of December, Anno Domini, Eighteen Hundred and Forty-five, elect you one of the Judges of the Supreme Court of the State of Georgia.

These are therefore, in virtue of such election, to commission and empower you, and you are hereby commissioned and empowered to do, transact and perform, all and singular, the duties and functions of a Judge of the Supreme Court of the State of Georgia, agreeably to the Constitution and Laws of this State. This Commission to continue in force for and during the term of six years, from this date, or until a successor is appointed, according to the mode prescribed by the Constitution; and for so doing, this shall be your full authority.

Given under my hand and the great seal of the State at the Capitol, in Milledgeville, the twenty-fourth day of December, in the year of our Lord eighteen hundred and forty-five, and of the Independence of the United States of America the seventieth.

[L. S.] By the Governor,

Geo. W. Crawford.

N. C. Barnett, Secretary of State.
Copy of the Oath taken by each of the Judges.

EXECUTIVE DEPARTMENT, GEORGIA.

I, Joseph H. Lumpkin, do solemnly swear, that I will faithfully and impartially discharge, all and singular, the duties of a Judge of the Supreme Court of the State of Georgia, according to the Laws and Constitution thereof, and that I will support the Constitution of the State of Georgia and of the United States—so help me God.

Copy of the Commission of James M. Kelly, Esq., Reporter.

STATE OF GEORGIA.

By his Excellency George W. Crawford, Governor and Commander-in-chief of the Army and Navy of this State, and of the Militia thereof:

To James M. Kelly, Esq., Greeting:

Whereas, you were elected on the 26th day of January, 1846, Reporter of the Supreme Court of the State of Georgia, I do therefore, by virtue of the power and authority in me vested by law, hereby Commission you, the said James M. Kelly, Reporter as aforesaid.

You are therefore, hereby authorized and required, to do and perform, all and singular, the duties incumbent on you as Reporter as aforesaid, according to law and the trust reposed in you.

Given under my hand and the seal of the Executive, at the Capitol in Milledgeville, this 29th day of January, 1846, and of the Independence of the United States the Seventieth.

[L. S.] By the Governor, Geo. W. Crawford.

John H. Steele, S. E. D.

Copy of the Commission of R. E. Martin, Esq., Clerk.

STATE OF GEORGIA.

By his Excellency George W. Crawford, Governor and Commander-in-chief of the Army and Navy of this State and of the Militia thereof:

To Robert E. Martin, Esq., Greeting:

Whereas you were elected on the 26th day of January, 1846, Clerk of the Supreme Court of the State of Georgia, I do therefore, by virtue of the power and authority in me vested by law, hereby Commission you the said Robert E. Martin, Clerk as aforesaid. You are therefore hereby authorized and required to do and perform, all and singular, the duties incumbent on you as Clerk as aforesaid, according to law and the trust reposed in you.

Given under my hand and the seal of the Executive, at the Capitol in Milledgeville, this 29th day of January, 1846, and of the Independence of the United States the Seventieth.

[L. S.] By the Governor, Geo. W. Crawford.

John H. Steele, S. E. D.
Copy of the Oath of the Reporter.

I, James M. Kelly, do solemnly swear, that I will faithfully discharge the duties of Reporter of the Supreme Court of the State of Georgia, and that I will support and defend the Constitution of the United States and of the State of Georgia, and further, that I am not the holder of any public money unaccounted for—so help me God.

Copy of the Oath of the Clerk.

I, Robert E. Martin, do solemnly swear, that I will faithfully discharge the duties of Clerk of the Supreme Court of the State of Georgia, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia, and further, that I am not the holder of any public money unaccounted for—so help me God.

Supposing that an acceptable service might be rendered to those practicing in the Supreme Court, the Compiler presents the following forms:

Bill of Exceptions.

STATE OF GEORGIA.

Baldwin County, Superior Court, May Term, 1846.

JOHN DOE

RICHARD ROE

Assumpsit.

Be it remembered, that the parties in this cause were at issue on the Plea of the Defendant, of (payment; failure of consideration; statute of limitations, &c., as the case may be;) and a jury being regularly empaneled to try said issue; and on the trial of said issue, the defendant offered the testimony of Charles Smith and others, by Commission, legally taken, and moved said Court that the same might be admitted, to prove that (here state the point to be proved by the introduction of the testimony;) to the admission of which testimony, the plaintiff objected and insisted that the same ought not to be admitted; (a certified copy of said testimony and a brief of the oral evidence in said cause, are hereunto annexed.) The defendant insisted that said testimony ought to be admitted, on the trial of said issue, on the following grounds, first, because (here state the grounds relied upon for the admission of the testimony;) and the Court did overrule said motion, and exclude the same, on the grounds, first, because (here set out, fully and particularly, the grounds upon which the Court excluded the testimony.) And the defendant here in Court, and during the trial of said cause, excepts to the judgment and opinion of said Court, in excluding said testimony; and as the facts aforesaid do not appear of record, the defendant prays that his Bill of Exceptions may be certified and signed by the Judge of said Court, that the same may become part and parcel of the record, in said cause. Dated this May 2, 1846.

Simon Wake, def't's atty.

By the Court examined, allowed, and ordered to be lodged on file.

Certificate of the Clerk.
STATE OF GEORGIA—Baldwin County.

CLERK'S OFFICE, Superior Court, May 2, 1846.
I do hereby certify that these are the original Writ of Error and Citation, filed in my Office by the plaintiff in Error.

Given under my seal and official signature.

L. S.

WILLIAM STEELE, Clerk.

Assignment of Error.

Supreme Court—May Term, 1846.

RICHARD ROE, vs. JOHN DOE.

In Error.

Afterwards, to-wit, on the first day of May, in this same term, before the Judges of the Supreme Court of the State of Georgia, in the city of Milledgeville, comes the said Richard Roe, by Thomas Williams his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, in this, to-wit, that the writ aforesaid, and the matters therein contained, are not sufficient in law for the said John Doe to have or maintain his aforesaid action thereof against the said Richard Roe: there is, also, error in this, to-wit, that upon the trial of the aforesaid action of Assumpsit in the said Superior Court, the Plaintiff here moved the Court to permit him to introduce the testimony of Charles Smith and others, by commission, legally taken for the purpose of proving, (here state the point to be proved by the testimony,) which motion was overruled by the Court, and said testimony not allowed to be read, on the grounds (here set out the grounds upon which the Court excluded the testimony) which, by the record aforesaid, does not appear; and the judgment aforesaid, in form aforesaid given, was given for the said John Doe against the said Richard Roe, whereas by the law of the land, the said judgment ought to have been given for the said Richard Roe against the said John Doe. And the said Richard Roe prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost, by occasion of the said judgment, &c.

THOMAS WILLIAMS, plaintiff's attorney.

Traverse.

JOHN DOE, vs. RICHARD ROE.

In Error.

And hereupon afterwards, to-wit, on the first day of May, in the year of our Lord eighteen hundred and forty-six, the said John Doe, by Simon Wake, his attorney, freely comes here into Court, and says, that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and he prays that the Supreme Court of Judicature, before the aforesaid Judges thereof now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid, above assigned for error, and that the
judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c. And therefore prays affirmance of said judgment, &c.

SIMON WAKE, defendant’s attorney.

Judgment of Affirmance.

SUPREME COURT—May Term, 1846.

Present the honorable Joseph H. Lumpkin, Hiram Warner, and Eugenius A. Nisbet, Judges of said Court.

RICHARD ROE, 

JOHN DOE. 

This cause came on to be heard on the Transcript of the record of the same, together with the Bill of Exceptions from the Superior Court, holden in and for the County of Baldwin, and was argued by counsel; on consideration whereof, it is considered, by this Court, that the judgment of the Superior Court, in this cause, be and the same is hereby affirmed. Judgment signed this May 10, 1846.

SIMON WAKE, defendant’s attorney.

Judgment of Reversal.

SUPREME COURT—May Term, 1846.

Present the honorable Joseph H. Lumpkin, Hiram Warner, and Eugenius A. Nisbet, Judges of said Court.

RICHARD ROE, 

JOHN DOE. 

This cause came on to be heard on the Transcript of the record of the same, together with the Bill of Exceptions, from the Superior Court, holden in and for the County of Baldwin, and was argued by counsel; on consideration whereof, it is considered by the Court here, that there was error in the Superior Court, in refusing to admit in evidence, the testimony of Charles Smith and others, by commission legally taken, upon the motion of the plaintiff in error. (Here state the errors assigned by the Supreme Court distinctly.) It is therefore considered by the Court here, that for the errors aforesaid, the judgment of said Superior Court be, and the same is hereby reversed. Judgment signed this May 10, 1846.

THOMAS WILLIAMS, plaintiff’s attorney.

Transcript.

STATE OF GEORGIA—BALDWIN COUNTY, May 10, 1846.

To the honorable Supreme Court of the State of Georgia.

The record and proceedings of the plaint, whereof mention is within made, with all things concerning the same, I certify at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

JAMES A. MERIWETHER, J. S. C.

CLERK’S OFFICE, SUPERIOR COURT, MAY 10, 1846.

The following is a transcript of the records and proceedings, in the Superior Court, in an action of Assumpsit, in which John Doe is plain-
tiff and Richard Roe is defendant, (here insert a complete transcript of the entire record of the cause.)

A true extract from the Minutes and Records of said Court: given under my official signature and seal of office.

[LS]

WILLIAM STEELE, Clerk.

REMITTITUR.

SUPREME COURT—May Term, 1846.

Present the honorable Joseph H. Lumpkin, Hiram Warner and Eugenius A. Nisbet, Judges of said Court.

RICHARD ROE vs. JOHN DOE. In Error.

To the honorable Superior Court of the County of Baldwin.

(Commence by setting out the judgment of Affirmance, or Reversal, as the case may be, and then proceed as required by Rule No. 16.)

Given under my official signature and seal of office, this May 10, 1846.

[LS]

ROBERT E. MARTIN, Clerk.

Notice of Signing Bill of Exceptions.

JOHN DOE vs. RICHARD ROE. Assumpsit, In Baldwin Superior Court.

The plaintiff is hereby required to take notice, that I have presented to the Honorable James A. Meriwether, one of the Judges of the Superior Courts of this State, presiding in said Court, a Bill of Exceptions in the above stated cause; and that said Bill of Exceptions has been allowed and signed. Dated May 10, 1846.

THOMAS WILLIAMS, Atty. pro Richard Roe.

Note.—The above notice must be given within ten days of the signing of the Bill of Exceptions, and the original notice filed with the other proceedings in the cause in the Office of the Clerk of the Superior Court, and a copy of the notice must be served by a Sheriff, Constable, or any Attorney of the Court.

BOND.

STATE OF GEORGIA, Know all men by these presents, that we

Baldwin County. Richard Roe and Charles Smith security, both of said State and County, are held and firmly bound unto John Doe, his heirs, executors and administrators, in the just and full sum of one thousand dollars; for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, the above bound Richard Roe, (who is defendant in an action of Assumpsit, in Baldwin Superior Court, in which action said John Doe is plaintiff) intends to sue out a Writ of Error in said action of Assumpsit:
now, should said Richard Roe, well and truly, pay the eventual condemnation money, in said action of Assumpsit, and all subsequent costs, provided said Writ of Error should be determined against him, then the above obligation to be null and void; else, of full force and virtue.

Tested and approved, by

WM. STEELE, C. S. C.

RICHARD ROE, [L. S.]

CHARLES SMITH, sec'y. [L. S.]

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Recizizance.

STATE OF GEORGIA, } Be it remembered that on the first day of May,

Baldwin County. } in the year of our Lord, eighteen hundred and forty-six, Richard Roe, of the city of Milledgeville, in the County aforesaid, and Charles Smith security, of the village of Scottsborough, in the County aforesaid, personally came before me, William Steele, Clerk of the Superior Court of said County, and acknowledged themselves to owe to his Excellency the Governor of said State and his successors in office, that is to say, the said Richard Roe the sum of five hundred dollars, and the said Charles Smith the sum of five hundred dollars, of good and lawful money of said State, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of the said State, if the said Richard Roe shall make default in the condition hereunder written.

The condition of the above-written Recognizance is such:—Whereas, at the late term of Baldwin Superior Court, said Richard Roe was found guilty of the crime of Misdemeanor. And whereas, said Richard Roe has presented to the honorable James A. Meriwether, one of the Judges of the Superior Courts, presiding in the Court aforesaid, and has had allowed and signed a Bill of Exceptions to said verdict: now, should the said Richard Roe, well and truly, be and personally appear, from term to term and from day to day, of said Superior Court, to abide the final order, judgment, or sentence of said Superior Court, then this Recognizance to be void; else, of full force and virtue.

Tested and approved, by

WILLIAM STEELE, C. S. C.

RICHARD ROE, [L. S.]

CHARLES SMITH, sec'y. [L. S.]

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Affidavit of Inability to give Security.

STATE OF GEORGIA, } In person, appeared before me, Charles Smith,

Baldwin County. } one of the Justices of the Peace, in and for said County, Richard Roe, who being duly sworn, deposeseth and saith, that he is unable, from his poverty, to give the security for the eventual costs and condemnation money, and that his counsel has advised him that he has good cause for a Writ of Error, in an action of Assumpsit lately determined in the Superior Court of Baldwin County, in which John Doe was plaintiff and deponent was defendant.

Sworn to and subscribed, } before me, this May 1, 1846.

Charles Smith, J. P. }

RICHARD ROE.
SUPREME COURT.

Judge's Certificate.

Supreme Court—May Term, 1846.

RICHARD ROE \{ In Error.\}

JOHN DOE \{ \}

I do hereby certify that in my opinion the above cause was not taken up for delay only.                             JOSEPH H. LUMPKIN, Judge.

Supersedeas.

In Chambers, May 3, 1846.

JOHN DOE \{ Assesspit. in Baldwin Superior Court.\}

RICHARD ROE \{ \}

To the Clerk of the Superior Court of Baldwin County:

The Defendant having moved a Bill of Exceptions in the above cause, which Bill of Exceptions has been allowed and signed; therefore, we command you, that you wholly cease from any further proceeding whatsoever, in relation to said cause, until further order in the premises.

JAMES A. MERIWETHER, J. S. C.

Note.—The above is resorted to only in cases where the Bill of Exceptions is applied for after the term has ended, and within the four days allowed. If the Bill of Exceptions is tendered and signed by the Judge during the Term, such Bill of Exceptions operates as such Supersedeas.

Attorney's License.

SUPREME COURT OF THE STATE OF GEORGIA.

WILLIAM S. ROCKWELL, Esq., having been admitted to practice in the Superior Courts of this State, and having produced satisfactory evidence of good private and professional character, and taken the oath prescribed by a rule of this Court, was on motion, admitted to plead and practice therein, and is entitled to all the privileges of a member of the Bar of the Supreme Court of Georgia.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court, this 10th day of February, 1846.

[\(L. S.\)]

ROBERT E. MARTIN, Clerk.
CHAPTER II.

SUPERIOR AND INFERIOR COURTS.

The Superior Court shall have exclusive jurisdiction in all criminal cases (except as relates to people of color, and fines for neglect of duty and for contempt of Court, for violations against road laws, and for obstructing water-courses, which shall be vested in such judicature or tribunal as shall be or may have been pointed out by law, and except in all other minor offences committed by free white persons, and which do not subject the offender or offenders to loss of life, limb or member, or to confinement in the penitentiary; in all such cases Corporation Courts, such as now exist or may hereafter be constituted in any incorporated city, being a sea-port town and a port of entry, may be vested with jurisdiction, under such rules and regulations as the legislature may hereafter by law direct,) which shall be tried in the county where the crime was committed; and in all cases respecting titles to land, which shall be tried in the county where the land lies, and also concurrent jurisdiction in all other civil cases, and shall have power to correct errors in inferior judicatories, by writ of Certiorari, and to grant new trials in said Superior Courts on proper and legal grounds: and in all cases where a new trial shall be so allowed, the judge allowing the same shall enter on the minutes of said Court his reasons for the same, and the said Superior Courts shall have appellate jurisdiction in such other cases as may be pointed out by law, in cases arising in inferior judicatories, which shall in no case tend to remove the cause from the county in which the action originated. The Inferior Courts shall also have concurrent jurisdiction in all civil cases, (except in cases respecting the titles to land) which shall be tried in the county wherein the defendant resides; and in case of joint obligors, or joint promissors, residing in different counties, the same may be brought in either county, and a copy of the petition and process served on the party residing out of the county in which the suit may be commenced, shall be deemed sufficient service, under such rules and regulations as the legislature have or may direct.

The Superior and Inferior Courts shall sit in each county twice in every year, at such stated times as have or may be appointed by the legislature.—Prin. Dig. 909.

1. The Superior Courts shall be held in each county in the respective districts twice in every year, by one or more of the Judges of the Superior Courts.

2. The Inferior Courts shall be held twice in every year in each county, by the Justices of the said Inferior Courts, or a majority of them.

3. The said Superior and Inferior Courts, shall have full power and authority to hear and determine all causes both civil and criminal, of which they shall severally have jurisdiction, according to the Constitution and Laws of this State, by a jury of twelve men, to be taken from the county, in such manner
as shall hereinafter be prescribed, according to the usages and customs of law.

4. (Repealed.)
5. The said Superior and Inferior Courts shall be Courts of Record, and have power to administer oaths, and exercise all other necessary powers appertaining to their jurisdictions respectively, according to law; and where any of the said Courts shall fail to meet, the proceedings in such Courts shall not thereby be discontinued, but shall stand continued over in the same manner as if such failure had not been; and all witnesses going to, attending on, and returning from any of the said Courts, shall be free from arrest on any civil process.

6. The said Courts shall have power on the trial of causes cognizable before them respectively on ten days' notice, and proof thereof being previously given to the opposite party, or his, her, or their attorney, on motion to require either party to produce books and other writings, in his, her, or their possession, power or custody, which shall contain evidence pertinent to the cause in question, under circumstances where such party might be compelled to produce the same by the ordinary rules of proceeding in equity; and if the plaintiff shall fail or refuse to comply with such order, it shall be lawful for the Court on motion to give judgment against such plaintiff as in case of non-suit; and if the defendant shall fail or refuse to comply therewith, the Court on motion shall give judgment against such defendant as in case of judgment by default; and the said Courts respectively shall have power and authority to establish copies of lost papers, deeds, or other writings, under such rules and precautions as are or may have been customary and according to law and equity.—Act of 1799; Prin. Dig. 420.

Books and Papers.

1. That from and after the passing of this Act, that the time allowed for the service of notices requiring the production of books, papers, or other writings to be used as evidence upon the trial of any cause cognizable before the Superior or Inferior Courts of this State, as provided for in the sixth section of the judiciary act of seventeen hundred and ninety-nine, shall be as follows, to wit: if the party notified reside in the county where said suit is pending, shall be ten days; if out of said county and not more than one hundred miles distant, fifteen days; if over one hundred miles and less than two hundred, twenty days; if two hundred miles or more, or beyond the limits of this State, sixty days.

2. That in case of the service of any notice as aforesaid, where it shall be made clearly and satisfactorily to appear to the Court before which the cause is pending, that the party notified has used due and proper diligence, but cannot respond to said notice, that it shall be continued at the instance of the parties notified.—Act of 1841; pamp. p. 142.

Notice to produce Books.

JOHN DOE,

RICHARD ROE.

Assumpsit, in Houston Superior Court.

The plaintiff is hereby notified and required, to produce on the trial of this cause, the original Books of Account kept by him, containing the Account of the defendant with the plaintiff, upon which his action is founded; and all other Books and Papers, in the possession of the plaintiff, which relate in any way, to said Account; as they will be required to be used in evidence, on the trial of said cause; this May 1, 1846.

JAMES LONG, def’t’s att’y.
STATE OF GEORGIA, } In person appeared before me, James Mack,  
Houston County. } a Justice of the Peace, in and for said county,  
Richard Roe, defendant in the within cause, who being duly sworn,  
says that he has reason to believe that the Books of Account in the  
within Notice required, are in existence; that he believes they are  
within the possession, power or control of the said Plaintiff, and that  
they contain material evidence for this Deponent, on the trial of said  
Issue.  
Sworn to and subscribed,  
before me, this May 1, 1846.  
James Mack, J. P.  

RICHARD ROE.  

No notices under the 6th section of the judiciary act of 1799, hereafter to  
be served, shall be available, unless the party for whose benefit they shall be  
served, or his agent, shall previously have made affidavit (or his attorney  
stated in his place) that the deponent or attorney has reason to believe the  
books or papers required to be produced, are or have been in existence, that  
he believes they are within the possession, power or control of the person  
notified, and that they are material to the issue, (which affidavit shall be filed  
in office before the notice shall be available,) nor unless the Court shall be of  
opinion that the books or papers sought to be obtained are material to the  
issue. And it shall be deemed a sufficient compliance with the notice, (whether  
served heretofore or hereafter,) if the party notified being a resident of  
any other county of the State, than that wherein the case is pending, shall  
make an affidavit in writing before some judicial officer of the State, that the  
books and papers required and not produced, are not, nor have been in his  
possession, power or control, since the service of such notice. And if the  
person notified be or reside without the State at the time of receiving such  
note, an affidavit to the foregoing effect taken before some judge of the  
Superior or County Court of the State or kingdom in which he may be shall be  
deemed sufficient.—57th common law rule. 

Note.—If the Plaintiff cannot produce the books of account, required by the Notice of  
the Defendant, he must make the following affidavit, and it would be better that it should  
be drawn up on the back of the notice served on him:

Plaintiff’s Affidavit. 

STATE OF GEORGIA, } In person appeared before me, James Mack, a  
Houston County. } Justice of the Peace, in and for said county, John  
Doe, plaintiff in the within cause, who being duly sworn, says that the  
Books of Account described in the within Notice, are not, nor have  
they been in his possession, power or control, since the service of said  
Notice.  
Sworn to and subscribed,  
before me, this May 1, 1846.  
James Mack, J. P.  

JOHN DOE.  

Plaintiff’s Affidavit. 

STATE OF PENNSYLVANIA, } Before me, William Rust, Judge of the  
Philadelphia County. } County Court, of said State and County,  
in person came John Doe, who being duly sworn, deposeth and saith,  
that he has instituted his action of Assumpsit against Richard Roe, in  
the Superior Court of the county of Houston, in the State of Georgia,  
on an Open Account; that deponent has received from said Richard  
Roe Notice to produce on the trial of said cause, the original Books of
Account and other Papers, containing the Account of the said Richard Roe, contracted with deponent; that the Books and Papers required, cannot be produced, are not, and have not been in the possession, power, or control, of deponent, since the service of the said Notice.

Sworn to and subscribed, before me, this May 5, 1846.

William Rust, J. C. C.

JOHN DOE.

When a merchant or tradesman, being a party to a suit in any of the Courts of this State, shall be notified to produce his books of account, or any of them, to be used as testimony on the trial, if the party so notified shall transmit to the Court in which the case is pending, a transcript from his books of all his accounts and dealings with the opposite party, together with an affidavit (taken pursuant to the fifty-seventh common law rule of Court) that the same is a fair and perfect transcript as aforesaid, and that he cannot produce the book or books required without suffering a material injury in his trade, this shall be deemed a compliance with the notice; provided, if the adverse party will swear that he verily believes that the books contain entries material to him which do not appear in the transcript, the Court will grant him a commission to be directed to certain persons named by the parties and approved by the Court, to cause the adverse party to produce the book or books required, (he being first sworn that the book or books produced is, or are, all that he has that answer to the description in the notice,) to examine said books, and to transmit to the Court a fair statement of the accounts between the parties, under their hands, sealed and transmitted as on other commissions, which statement when received shall be deemed a sufficient compliance with the notice.—59th com. law rule.

Transcript.

A transcript of the books of account, of John Doe, merchant, of the city of Macon, in the county of Bibb, in the State of Georgia; relative to the account of Richard Roe:

Richard Roe, of Houston County,

To John Doe, merchant, of Macon, . . . . Dr.

Jan. 10, 1845. 1 bolt Cotton Bagging, 70 y' ds. at 25, . $17 50

" 15, " 1 bag Coffee, 150 lbs. at 15, &c. . . . . . 22 50

STATE OF GEORGIA, } In person, appeared before me, John Doe, Bibb County, } who being sworn, deposes and saith, that deponent has instituted his action of Assumpsit, in the Superior Court of the county of Houston, against Richard Roe, on an open account, which action is now pending and undetermined; in said Court; that deponent has received a notice from said Richard Roe, requiring deponent to produce his books of account, to be used as testimony, on the trial of the said cause; that the above and foregoing is a full, fair and entire transcript from deponent’s books, of all his accounts and dealings with the said Richard Roe, and that deponent cannot produce the books required by said notice, without suffering a material injury in his trade.

Sworn to and subscribed, before me, this May 5, 1846.

James West, J. P.

JOHN DOE.
Defendant's Affidavit.

STATE OF GEORGIA, } Personally, appeared before me, Richard  
Houston County. } Roe, who being duly sworn, deposeth and  
saith, that John Doe, of the city of Macon, in the county of Bibb, has  
instituted his action of Assumpsit, in the Superior Court of said county,  
against deponent, on an open account; which action is now pending  
and undetermined in said Court; that deponent gave said John Doe  
notice to produce his books of account, on the trial of said case, to  
be used as testimony; that said John Doe has furnished a transcript  
from his books, in answer to said notice; that deponent verily believes,  
that said transcript does not contain all the dealings and transactions,  
between said John Doe and deponent, and that the books of account,  
of the said John Doe, contain entries material to deponent’s defence of  
said action, which do not appear in said transcript, as aforesaid, fur-  
nished by the said John Doe.
Sworn to and subscribed,  
before me, this May 10, 1846.  
James Mack, J. P.

RICHARD ROE.

Commission.

STATE OF GEORGIA, } By the Superior Court of said county.  
Bibb County. } To James Thomas, William Rich and Roger Wall, or any two of them.
Whereas, at the April term of the Superior Court of said county,  
eighteen hundred and forty-five, John Doe, merchant, of the city of  
Macon, instituted his action of Assumpsit, against said Richard Roe,  
of said county, on an open account. And whereas, said Richard Roe  
notified said John Doe, to produce, at the trial of said action, his books  
of account to be used as testimony on the trial of said case. And  
whereas, said John Doe transmitted to said Court a transcript of his  
books of account, relative to the account of said Richard Roe. And  
whereas, said Richard Roe has filed his affidavit, stating, that he verily  
believes, that the books of account of the said John Doe, contain  
entries material to said Richard Roe, on his defence to said action,  
which do not appear in said transcript. You are, therefore, hereby  
authorized, to cause said John Doe, to produce before you, the books  
of account of the said John Doe, which in any form, or manner,  
contain the account, or any item thereof, against the said Richard Roe;  
and said books being so produced, you are required to swear the said  
John Doe, that the book or books produced is, or are, all that he has,  
that answer to the description in said notice, and to examine said  
books, and to transmit a fair and full statement and transcript of  
the entries therein, relating to said Richard Roe, to the next Superior  
Court, to be held in and for said county, on the fourth Monday in  
October next.
Witness, the honorable Samuel Wright, one of the judges of the  
Superior Courts of said State, this June 20, 1846.

JAMES HOLDFAST, Clerk.

Notice to the Plaintiff.

STATE OF GEORGIA, } To John Doe, merchant:—By virtue of a com-
Bibb County. } mission to us directed, from the honorable  
Superior Court of the county of Houston, you are hereby notified and
required, to produce before us, this day, in the city of Macon, by ten o'clock in the forenoon, at the court-house, all the books of account, in your possession, and paper or papers, which in any manner, relate to the dealings and transactions between yourself and Richard Roe, of said county of Houston.

Given under our hands and official signatures, this July 10, 1846.

   JAMES THOMAS,
   WILLIAM RICH,  
   ROGER WALL.

Plaintiff's Affidavit.

STATE OF GEORGIA,  
       Bibb County.
   I, John Doe, merchant, do solemnly swear, that the books required by the notice of Richard Roe, to be produced on the trial of an action of Assumpsit, instituted by deponent against said Richard Roe, in the Superior Court of Houston County, and now presented to the Commissioners, appointed by said Court, are all that deponent has, that answer to the description, in said notice, or in any wise relate to transactions between the deponent and said Richard Roe; that the entire account of said Richard Roe is contained in said books; and that deponent has not in his possession, or control, any other book or paper, which in any manner relate to said account, upon which said action is founded.

Sworn to and subscribed, before me, this July 10, 1846.

   JAMES ROBERTS, J. P.

   JOHN DOE.

Return of the Commissioners.

STATE OF GEORGIA,  
       Bibb County.
   To the honorable Superior Court of the county of Houston.

By virtue of the Commission to us directed, dated the 20th day of June, eighteen hundred and forty-five, requiring us to cause John Doe, merchant, to produce before us, the books of account, of the said John Doe, which in any form, or manner, contain the account, or any item thereof, against Richard Roe; and said books being so produced, we were required to swear said John Doe, that the books or books produced, is, or are, all that he has that answer to the description in the notice; and to examine said books, and transmit to the Court, to be held on the fourth Monday in October next, a fair and full statement and transcript of the entries thereof, relating to the said Richard Roe, we did on the tenth day of July, eighteen hundred and forty-five, notify said John Doe, to produce before us, said books of account, and he having produced said books, was sworn, as in said Commission directed. The following is a full, fair, and complete transcript from said books, of all transactions, in any manner or form, relating to said Richard Roe, in his dealings with said John Doe.

[Here insert the transcript from the books.]

Given under our hands and official signatures this July 10, 1846.

   JAMES THOMAS,
   WILLIAM RICH,  
   ROGER WALL.

Note.—The packet may be sent by mail, or delivered to some person, who will return it to the Court. The same entries and oaths are required, as in cases of Interrogatories, which see.
Lost Papers.

When any person shall seek to establish lost papers under the 6th section of the judiciary act of 1799, he shall present a petition to the Superior Court, together with a copy in substance of the paper lost, as nearly as he can recollect, which copy shall be sworn to by the party, or proved by other evidence: whereupon a rule nisi may be obtained, calling upon the opposite party to show cause (if any he have) why the copy should not be established in lieu of the original so lost, which rule shall be personally served on the party, if to be found within the State, and if he cannot be found, then the said rule nisi shall be published in some public Gazette in the State for the space of three months. 52d com. law rule.

Petition.

STATE OF GEORGIA, } To the honorable Superior Court, of said
Houston County. } County.

The petition of John Doe, respectfully showeth, that heretofore, to wit, on the first day of January, last past, your petitioner was possessed, as of his own right and property, of an instrument in writing, commonly called a promissory note, made and executed by Richard Roe, the date whereof, was the twenty-fifth day of December, eighteen hundred and forty-four; that said note was for the sum of one hundred dollars; payable to your petitioner, or bearer, and due, one day after date, (a copy of which note, is hereunto annexed.) That on the said first day of January, last past, said note was totally and entirely destroyed by fire, the same being due and unpaid; wherefore, your petitioner prays the establishing of the copy note hereunto annexed, in lieu of the original so destroyed, and as in duty bound, your petitioner will ever pray, &c. This April 20, 1845.

Simon Wake, pet'r's att'y.

Copy Note.

One day after date, I promise to pay John Doe, or bearer, one hundred dollars, for value received, this 25th December, 1844.

Richard Roe.

Plaintiff's Affidavit.

STATE OF GEORGIA, } In person, appeared before me, John Doe, who
Houston County. } being sworn, deposeth and saith, that he was
possessed, as of his own right and property, of the original note, of which the above is a copy, as he believes, and as near as he can recollect; that said note being due and unpaid, was destroyed by fire, on the first day of January, last past.

Sworn to and subscribed
before me, this April 20, 1845.

James Mack, J. P.

JOHN DOE.

Rule Nisi.

STATE OF GEORGIA—HOUSTON COUNTY.

SUPERIOR COURT—April Term, 1846.

Present the honorable John J. Lloyd, Judge of said Court.

It appearing to the Court, by the petition of John Doe, (and copy note and affidavit thereunto annexed,) that said John Doe was pos-
sessed of the original note, in said petition mentioned, and that said original note has been destroyed by fire; and he, the said John Doe, praying the establishing of the said copy note, in lieu of the original so destroyed; it is, therefore, ordered, that said Richard Roe show cause, (if any he have,) by the first day of the next term of this Court, why the said copy note should not be established, in lieu of the original destroyed, as aforesaid. And it is further ordered, that a copy of this rule be served, personally, on said Richard Roe, if to be found within this State, and if not, that it be published in the Southern Recorder, three months, previous to the next term of this Court.

A true extract from the Minutes, this May 1, 1845.

JAMES HOLDFAST, Clk.

Rule Absolute.

SUPERIOR COURT—October Term, 1846.

JOHN DOE vs. RICHARD ROE.

Motion to establish destroyed paper.

It appearing to the Court that the order of the Court, granted at the last Term, has been duly served (or published) as therein directed, by the affidavit of Peter Short, and no cause being shown in opposition to said Motion; it is, therefore, ordered and adjudged, that said rule nisi be made absolute, and that said copy note be, and the same is hereby, established in lieu of the destroyed original; and it is further ordered, that the clerk furnish John Doe with a certified copy of the said established note, and of this rule, upon application and payment of costs.

Arbitration.

30. In all matters submitted to reference by parties, in a suit under a rule of court or other agreement in writing, signed by the parties, judgment shall be entered up by the party in whose favor the award is given, and execution shall issue for the sums awarded, to be paid as they respectively become due, and to be levied on the property of the party against whom the judgment shall have been entered up, and such other proceedings shall be had thereon by the Court, as in cases of judgments entered up on verdicts of juries. Provided, that no judgment shall be entered upon an award, where it shall appear any other cause or causes stand on the docket of the Court, against the defendant or defendants, undetermined, before the cause in which a rule or other agreement in writing for arbitration is entered.—Act of 1799; Prin. Dig. 427.

Submission to Referees.

SUPERIOR COURT—April Term, 1846.

JOHN DOE vs. RICHARD ROE.

Assumpsit.

Present the Honorable John J. Lloyd, Judge of said Court.

It is ordered by the consent of both parties in this cause, that the matters in difference in said cause, be referred to the award and arbitriment of Charles Smith and William Johnson, with power to them, if deemed necessary, to select an umpire; and that they report in the premises at the next Term of this Court.

A true extract from the Minutes, this May 1, 1845.

JAMES HOLDFAST, Clerk.
Return of the Referees.

JOHN DOE
Vs.
RICHARD ROE.

October Term, 1845. Award, &c.

To the honorable Superior Court, of Houston County:

Whereas, at the April term of said Court, eighteen hundred and forty-five, the above parties referred to our arbitrament and award, an action of Assumpsit, pending between them, in said Court. And, whereas, on the first day of May, eighteen hundred and forty-five, after having given notice to both parties, to appear before us at Perry, we proceeded to examine the merits of said cause and the evidence, without the interposition of an umpire: we do determine and decide as follows, to wit: said Richard Roe is to pay said John Doe the sum of seventy-five dollars, for his principal debt, and the sum of fifteen dollars for his costs, and that said action of Assumpsit, be entered settled, upon the payment of said sums.

John West,
Willis Hall,}

Referees.

Judgment.

Whereupon, it is considered by the Court, that the Award of the referees be and the same is hereby, made the judgment of the Court: that the plaintiff recover against the defendant, the sum of seventy-five dollars, for his principal debt, and the sum of fifteen dollars, for his costs, in this behalf laid out and expended, and the defendant in mercy, &c. Judgment signed this Oct. 21, 1845.

Simon Wake, plff's Att'y.

Certiorari.

54. Where either party in any cause in any Inferior Court shall take exceptions to any proceedings in any case affecting the real merits of such cause, the party making the same shall offer such exceptions in writing, which shall be signed by himself, or his attorney; and if the same shall be overruled by the Court, it shall and may be lawful for such party, on giving twenty days' notice to the opposite party or his attorney, to apply to one of the judges of the Superior Court, and if such judge shall deem the said exceptions to be sufficient, he shall forthwith issue a writ of Certiorari, directed to the clerk of such Inferior Court, requiring him to certify and send up to the next Superior Court, to be held in the said county, all the proceedings in the said cause, and at the term of the Superior Court to which such proceedings shall be certified, the said Superior Court shall determine thereon, and order the proceedings to be dismissed, or return the same to the said Inferior Court with order to proceed in the said cause.—Act of 1799; Prin. Dig. 432.

Note.—It will be noticed that the statute refers to the “Inferior Court” and to the “Clerk of the Inferior Court,” evidently meaning the Court of that name, and not to Justices' Courts, nor any Court inferior to the Superior Court, and so it must be understood; yet as Appeals are allowed, in most cases, from the Inferior to the Superior Court, and Certiorari but seldom resorted to, in carrying proceeding from the Inferior to the Superior Court; and as Certiorari is the only means of carrying up cases from the Justices' to the Superior Court, which has now become frequent, the Compiler thought it would answer a more valuable purpose to adapt the Forms to Justices' Courts. In such cases the Exceptions must not necessarily be in writing.

No Certiorari will be sanctioned unless the alleged error be distinctly set forth in the petition; and no other errors shall be insisted upon at the hearing than are stated in the petition.—14th com. law rule.

E. MERTON COULTER
Exceptions.

JOHN DOE

May term, 1845. Debt in Justices' Court, 619th district, G. M., and Judgment for the plaintiff.

And now, comes the defendant, in proper person, and excepts to the judgment rendered in the above case for the plaintiff: and for cause of exception to said judgment says:

1st. Because, the Court decided contrary to law, in this, to wit:

(here insert the error in the decision, fully and distinctly.)

2dly. Because, the Court erred in its application of the evidence, in this to wit: (here insert the error committed, in the application of the evidence.)

3dly. Because, &c. &c.

For all which grounds of exception, the defendant excepts to said judgment, this May 1, 1845. RICHARD ROE, Def't.

Exceptions overruled, by the Court.

JAMES MACK, J. P.

Notice to the Plaintiff.

JOHN DOE, RICHARD ROE.

Debt in Justices' Court, 619th district, G. M., and Judgment for the plaintiff.

The plaintiff is hereby notified, that I shall apply on the fifteenth proximo, for the writ of Certiorari in the above cause, on the following grounds, to wit: (here state the grounds of exception, &c.) in terms of the statute, in such case made and provided; this May 10, 1845. RICHARD ROE, Def't.

Petition.

STATE OF GEORGIA, Houston County.

To the honorable Samuel Patch, one of the Judges of the Superior Courts.

The petition of Richard Roe, respectfully showeth, that heretofore, to wit, at the May term, of the Justices' Court, of the 619th district, G. M., of said county, there came on to be tried, in said Court, then and there, a cause, which had been, by John Doe, previously commenced against your petitioner, on a note of hand. And your petitioner avers, that at the appearance term of said case, your petitioner filed his plea of the general issue, to said case. And your petitioner avers, that at the trial term of said case, judgment was rendered in said case by the presiding justices, in favor of the plaintiff. And your petitioner avers, that he excepted, in writing, to said judgment, on the following grounds, to wit: (here insert, fully and at large, the grounds of exception, as taken at the time of rendering the judgment,) which exceptions were overruled by the presiding justices of said Court. And your petitioner avers, that notice has been given to your plaintiff, of the application for Certiorari, and bond and security filed, and costs paid in conformity with the statute, in such case made and provided: wherefore, your petitioner alleges error, in the said justices, in rendering said judgment, because, (here insert the errors complained of, either of law, or fact, or both at large,) therefore, to the end, that said errors may be corrected, and justice done to your petitioner, may it please your honor to grant unto your petitioner, the State's writ of
Certiorari, directed to the said justices presiding in said court, requiring them, to certify and send up the proceedings in said case, at the next term of the Superior Court, to be held in and for said county. And, may it please your honor to grant unto your petitioner, an order for a new trial, in said case, or such other order, as may seem to your honor proper in the premises, and in conformity with the principles of law and justice; and that, in the mean time, all proceeding in said case, in the court below, be stayed; and, as in duty bound, your petitioner will ever pray, &c. 

RICHARD ROE, Plaintiff.

In person, appeared before me, Richard Roe, who being sworn, deposeth and saith, that the facts stated in the above petition, for Certiorari, are true.

Sworn to and subscribed, before me, this June 1, 1845.

William Ross, J. P.

Richard Roe.

1. From and after the passing of this act, it shall not be lawful for any judge of the Superior Court of this State to sanction or grant any Certiorari, unless the person or persons aggrieved and applying for the same, shall have previously paid all costs which may have accrued on the trial below, and have given to the magistrate or magistrates, or justices of the Inferior Court, or clerk of the Inferior Court, as the case may happen, good and sufficient security for the eventual condemnation money, or any future costs which may accrue.

Bond.

STATE OF GEORGIA,

Know all men, by these presents, that we, Richard Roe and Charles Smith, security, are held and firmly bound unto John Doe, in the just and full sum of sixty dollars, good and lawful money of said State; for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this June 1, 1845.

The condition of the above obligation is such, that, whereas, said John Doe, heretofore instituted his action against said Richard Roe, in the Justices' Court of the 619th district, G. M., on which action said Court rendered judgment in favor of the plaintiff, for the sum of thirty dollars. And, whereas, said Richard Roe is about applying for the writ of Certiorari, in said case: now, should said Richard Roe well and truly pay the eventual condemnation money, and all future costs which may accrue in said case, then this obligation to be void; else, to remain in full force and virtue.

Tested and approved, by Richard Roe, L. S.

James Jones, J. P.

Charles Smith, sec'y, L. S.

2. The person applying for said Certiorari shall produce to the judge authorised to grant the same, a certificate from the magistrate or magistrates, or justices of the Inferior Court who tried the case, or clerk of the Inferior Court, whose duty it shall be to give said certificate, informing said judge that the costs have been paid, and security given in terms of this act.—Act of 1811; Prin. Dig. 437.
Justices Certificate.

STATE OF GEORGIA, To the honorable Samuel Patch, one of the judges of the Superior Courts.

This is to certify, that in the case of John Doe against Richard Roe, in the Justices' Court of the 619th District, G. M., in which judgment has been rendered for the plaintiff, the defendant has paid all costs which have accrued on the trial, and given bond and security for the payment of the eventual condemnation money and all future costs, in conformity with the statute, in such case made and provided.

Given under my hand and official signature, this June 1, 1845.

JAMES MACK, J. P.

2. That in all cases hereafter determined, in any of the Justices' Courts of this State, on the appeal, and the party cast shall be dissatisfied with the decision, if such party will make an affidavit in writing, that he or she is advised and believes that he or she has good cause for certioraring the same to the Superior Court, and that owing to his or her poverty, he or she is unable to pay the costs and give security as required by law, such affidavit shall in every respect answer instead of the certificate of the presiding justice, that the cost has been paid, and security given as now required by law; and the judges of the Superior Courts respectively, shall grant writs of Certiorari on the production of such affidavits, if sufficient cause be shown in the petition and affidavit, any law, usage, or custom, to the contrary notwithstanding.—Act of 1842; pamp. p. 14.

Plaintiff's Affidavit of Inability to give Security.

STATE OF GEORGIA, In person appeared before me, James Mack, one of the Justices of the Peace in and for said county, Richard Roe, plaintiff in the case stated in the foregoing petition for Certiorari, who being duly sworn, deposed and saith, that he is advised and believes that he has good cause for Certiorari, in said case, and that owing to his poverty, he is unable to pay the costs and give security as required by law in cases of Certiorari.

Sworn to and subscribed before me, this June 1, 1845.

James Mack, J. P.

RICHARD ROE.

Sanction.

IN CHAMBERS, June 2, 1845.—READ AND SANCTIONED.

To the Justices of the Peace, in and for the six hundred and nineteenth district, G. M., in Houston County.

Whereas, Richard Roe alleges by his Petition for Certiorari, that errors in law and evidence, have been committed in your Court, in a certain cause lately determined therein, in which John Doe was plaintiff and said Richard Roe defendant; and we being willing that said errors, if they exist, should be corrected: you are hereby commanded and required, under the penalty of the law, that you certify and send up to our Superior Court, to be held in and for said County, on the fourth Monday in October next, under your hands and seals, all the facts and proceedings in said cause, as they are of record in your
Court; and in the mean time let all proceedings in said cause be stayed, until further order; and have you, at our said Court, this Writ.

Given under my hand and official signature.

SAML PATCH, J.S.C.

Note.—The draftsman should always write out the Sanction, leaving blanks for sums and dates to be filled up by the judge.

All Writs of Certiorari after having been docketed by the clerk shall be delivered to the magistrate whose proceedings are the subject of complaint, and written Notice shall be given to the opposite party in interest, at least ten days before the hearing of the cause; unless the Certiorari shall be applied for and sanctioned within twenty days after the decision complained of.—15th com. law rule.

Notice.

STATE OF GEORGIA. 

Houston County.

John Doe—You are hereby notified, that I have applied for, and have had granted, from the honorable SAML PATCH, judge of the Superior Courts, the State's Writ of Certiorari, in the case in the Justice's Court, in and for the 619th district, G. M. in which you were plaintiff, and I defendant; adjudicated in said Justice's Court, at the May term, in your favor. Said Writ of Certiorari, requires the Justices of said Court then presiding, to make their answer, at the next term of the Superior Court; this July 1, 1845.

RICHARD ROE, P'tff.

Answer of the Justices of the Peace.

STATE OF GEORGIA.

Houston County.

To the honorable Superior Court of said County.

In answer to the Writ of Certiorari, to us directed, (presiding in the Justice's Court of the 619th district, G. M.,) dated June 2, 1845, the undersigned respectfully submit, that the following contains a full and complete Answer and correct statement, of the proceedings and evidence, as submitted during the progress and pendency of said cause, to wit: at the April term of the Justice's Court, eighteen hundred and forty-five, in and for said district, John Doe commenced his action, in said Court, against Richard Roe, on a promissory note, for the sum of thirty dollars. At the appearance term of said cause, the defendant appeared, and filed the plea of the general issue. At the May term of said Court, said cause came on to be tried, the undersigned presiding in said Court. Upon the trial of said cause, various questions of law arose between the parties, (here state the questions of law, and how they were decided.) There arose, also, various questions between the parties, as to the evidence, its legality and application, (here state the evidence, and how it was received and applied by the Court.) The Court, thereupon, proceeded to give judgment for the plaintiff, for the sum of thirty dollars, besides interest and costs. The defendant excepted to the judgment, and presented his exceptions, in writing, which were overruled by the Court. Appended is a copy of the note sued upon—a copy of the summons, and service—a copy of the defendant's plea, and a statement of the evidence, submitted on the trial.

Given under our hands and seals, this July 1, 1845.

JAMES MACK, J.P. [L. S.]
JOHN JONES, J.P. [L. S.]
NOTE.—The answer of the Justices of the Peace must not be written out by either of the parties, or their attorneys; nor written out by them and transcribed by another person.

NOTE.—When the magistrates have made out their Answer, which must be full and explicit, they then annex it, with wafer, or in some other manner, to the writ; they then endorse on the writ, "The execution of the within writ appears by the schedule hereunto annexed, July 1, 1845.

JAMES MACK, J. P.

JOHN JONES, J. P.

NOTE.—The writ and answer must then be returned to the Clerk of the Superior Court.

1. From and after the passage of this act, in all cases carried up by writ of Certiorari, from a Justice's Court, to the Superior court, and the said Certiorari shall be sustained by the said Court, and the proceedings in the Court below set aside, without further order; and in all cases carried up in like manner from a Justice's Court, to the superior Court as aforesaid, and the writ of Certiorari shall be sustained, and a new trial ordered, the plaintiff in Certiorari, provided he finally succeeds in his cause, shall recover of the defendant all cost that he or she may have been compelled to pay and lay out before a Certiorari could be granted.

2. It shall be the duty of justices of the Peace in all such cases, as are mentioned in the foregoing section, to issue execution in the name of the prevailing party, for all costs that may have accrued in the said case.—Act of 1831; Prin. Dig. 511.

That from and immediately after the passing of this act, it shall not be lawful for any judge of the Superior Court to sanction or grant any writ of Certiorari under the provisions of the above recited act (act of 1811,) unless such writ of Certiorari shall be applied for within the term of six months, next after the case has been determined in the Court below.—Act of 1838; pamph. p. 54.

That where any suit shall be brought to the superior or inferior courts in this State, and the verdict of the jury shall be for a sum under $30, the defendant shall not be charged with more cost than would have necessarily accrued; Provided, said recovery had been before a justice of the Peace; and the remainder of the court-charges may be retained out of the sum so recovered, and if the verdict of the jury be not of sufficient amount, the plaintiff shall be bound to pay the same; Provided, this Act shall not extend to, and govern cases where the demand set forth in the declaration, shall be proven to exceed the sum of $30. Provided, nothing herein contained shall extend to any case sounding in damages.—Act of 1809, Prin. Dig. 435.

2. No special pleadings shall be introduced or admitted in either the superior or inferior courts of this State, (other than in equity,) which shall be conducted in the same manner as is already pointed out by the judiciary system of this State now in force, and that every case shall be carried to the jury; and tried upon the petition, process and answer alone, without regard to the practice, now grown into use in the several courts of law in this State; and no nonsuit shall be awarded when the cause of action is substantially set forth in the declaration, for any formal variance between the allegation and proof.—Act of 1818; Prin. Dig. 442.

1. That from and after the passing of this Act, that if, from any circumstance, a majority of the justices of the Inferior Court in any of the counties of this State should fail to attend at the regular term of said inferior courts, or at any adjourned term, it shall and may be lawful for any one of the justices of the inferior court in the county where such failure may take place, together with the sheriff or his deputy, coroner, or constable, and the clerk of said court to adjourn said Court to such time as they in their judgment may think proper.
2. [See Ex'r and Adm'or.]
3. The clerks of the superior court of this State be authorised, whenever they are informed by the presiding judge that it is not possible for him to attend the regular term of said court, from sickness or other causes, to adjourn the same to such time as he may direct; and shall, moreover, advertise the same at the court house of the county in which said court is to be held, and one or more times in some public gazette of the State.—Act of 1823; Prin. Dig. 453.

That from and after the passage of this Act, none of the superior courts of this State shall be adjourned under the above recited act, for any other cause than that of sickness of the presiding judge, or of his family, or other providential cause, which shall be expressed in the order of adjournment.—Act of 1837; pamp. p. 79.

CHAPTER III.

JUDGES OF THE SUPERIOR COURT.

The judges of the superior court shall be elected for the term of four years, and shall continue in office until their successors shall be elected and qualified, removable by the governor on the address of two-thirds of both branches of the general assembly for that purpose, or by impeachment and conviction thereon.—Prin. Dig. 909.

The judges shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office; but shall not receive any other perquisites or emoluments whatever, from parties or others, on account of any duty required of them.—Prin. Dig. 910.

1. The judicial proceedings of the superior and inferior courts, of the several counties in this State, as well as the acts of the sheriffs, clerks, and other public officers of the said several courts, shall be and they are hereby declared to be efficient, legal, valid and binding; notwithstanding any judge of the said superior courts, justice or justices of the inferior courts, sheriff or sheriffs, clerk of clerks of any of the said several counties, hath or have not taken and subscribed the oath directed to be taken and subscribed in the act, entitled an act to compel all officers, civil and military, within this State, to take and subscribe an oath to support the Constitution thereof, passed the 16th day of February, 1799.

2. This act shall extend to, and have the effect of legalizing and rendering valid all past proceedings and acts of said courts and officers, as well as all other proceedings and acts of said courts and officers, which may take place, and be had, from and after the passing of this act.—Act of 1816; Prin. Dig. 214.

From and after the next election of judges of the superior courts of this State, that it shall be the duty of the said several judges to convene at the seat of government of this State once in each year, at such a time as they or a majority of them may appoint, for the purpose of establishing uniform rules of
practice throughout the several circuits of this State: and it shall be the duty of the judges so convened, to notify such of the judges who may be absent, of such rules or alterations of rules as may be established as aforesaid.—Act of 1821; Prin. Dig. 449.

2. In all cases in equity, when the judge of any circuit may be a party to such suit, or when the complainant will and shall make an affidavit, that the judge of the circuit where the cause is pending, or to be instituted, is interested in the subject matter of such cause in equity, it shall and may be lawful, for any judge of the superior courts of this State, to sanction such bills in equity, and grant such writs of injunction, and others as may be according to law, to effect the object of such bills.—Act of 1830; Prin. Dig. 468.

5. In all cases brought in the said superior courts, or either of them, where either of the judges thereof shall be a party, or interested therein, it shall be the duty of three or more of the justices of the inferior court, to preside at the trial of the same.—Act of 1801; Prin. Dig. 433.

It shall be the duty of the judges of the superior courts of this State, at the opening or commencement of every court, to give in charge to the grand juries, respectively, the substance of the sections contained in the code, relative to gambling.—Prin. Dig. 646.

It shall be the duty of the judges of the superior courts, at the commencement of every term, to give in charge to the grand jury the substance and intention of the sections of this division, in regard to trading with slaves.—Prin. Dig. 657.

Note.—In the Chapter on Grand Jury will be found the statutes which the Judges are specially required to give in charge, except the Act of 1843 P. p. 43 and 44, relative to providing for the education of the poor, which will be found in the Chapter on Education.

3. The judges of the superior court in each county shall, as often as they think proper, appoint three or more discreet persons to be commissioners of the jail and court-house, which said commissioners, or one of them, shall receive the moneys arising from licenses in their respective counties, fines of defaulting jurors, fines imposed by the court, and the forfeiture of recognizances, to be a fund set apart in each county, under the direction of the judges, for building and repairing the jail, court-house, pillory, and stocks, and for the support of prisoners.—Act of 1789; Prin. Dig. 171.

The judges of the superior courts, or any one of them, shall have power to issue writs of mandamus, prohibition, scire facias, and all other writs which may be necessary for carrying their powers fully into effect.—Prin. Dig. 911.

It shall be the duty of the judges of the superior courts, to make a special report annually to the governor of this State previous to the meeting of the general assembly, and by him to be submitted to the legislature, of all such defects, omissions, or imperfections in this code, as experience on their several circuits may suggest.—Prin. Dig. 662.

59. And the said judges, or any of them, shall have power to perpetuate testimony on such terms and in such manner as is usually practiced in courts of equity.—Act of 1799; Prin. Dig. 432.

It shall and may be lawful for the judges of the superior courts in this State, and they are hereby authorised to alternate in their districts from and immediately after the first day of January next, any law to the contrary notwithstanding.—Act of 1806; Prin. Dig. 43.4

55. The said superior courts shall have power to correct errors, and grant new trials, in any cause depending in any of the said superior courts, in such
manner and under such rules and regulations as they may establish, and according to law, and the usages and customs of courts.

57. In any case which has arisen since the signing of the present constitution, or which may hereafter arise, of a verdict of a special jury being given, contrary to evidence and the principles of justice and equity, it shall and may be lawful for the judge presiding to grant a new trial before another special jury, in the manner prescribed by this act. Provided, that twenty days’ notice be given by the party applying for such new trial to the adverse party of his intention, and the grounds of his application. And the said judge shall in all cases of application for new trials, or correction of errors, enter his opinion on the minutes of the court for his determination on each respective case.—Act of 1799; Prin. Dig.

A motion for a new trial shall not operate as a supersedeas, unless an order to that effect be entered on the minutes; and in every application, for a new trial, a brief of the testimony in the cause, shall be filed by the party applying for such new trial, under the revision and approval of the court.—61st com. law rule.

1. That from and after the passing of this act, it shall be, and it is hereby made the duty of the judges of the superior courts to write out in a fair and legible hand, and place upon the minutes of said courts respectively, their decisions and judgments in full, in all cases of motions for new trials, whether the same be granted or rejected by them, and in all cases of decisions or judgments upon writs of certiorari, mandamus, and habeas corpus and demurrer, and upon all motions in arrest of judgment, as soon after the making and argument of said motions, or the renderings of said decisions or judgments, as the nature and circumstances of the case will permit.

2. That immediately after said decisions or judgments shall be rendered and placed upon the minutes of said courts respectively, it shall be the duty of the clerks of said superior courts to send the originals thereof by mail, or other safe conveyance, to his excellency the governor of the State, who is authorized, and hereby required within all the month of August next ensuing the passage of this act, and annually thereafter, to cause the said written decisions or judgments, whenever the same shall be of general interest to the people, to be properly collated in their order, and a good and sufficient index made thereto, and an edition of five hundred copies thereof printed and published in pamphlet form, by contracting for the printing and publishing of the same within this State, upon the cheapest and most advantageous terms.

3. That immediately after the publication of said decisions or judgments, his excellency the governor shall transmit one copy thereof to each of the judges of the superior courts, and one copy to each of the inferior courts of this State, and make sale of the remaining copies upon such terms and in such manner as to him shall seem best for the interest of the State; and that the expense of collating, indexing and publishing said decisions or judgments shall be paid by his excellency the governor out of any moneys in the treasury not otherwise appropriated; and the money accruing from the sale of said remaining copies shall be paid into the treasury of this State.—Act of 1841; pamp. p. 132.

58. All new trials shall be had by a special jury, to be taken from the grand jury list of the county.—Act of 1799; Prin. Dig. 432.

1. That from and after the passage of this act, the judges of the superior courts in this State, shall severally have the power to appoint, temporarily, a clerk or sheriff in any county in which there may be a vacancy in either of said offices, at the time provided by law for the holding of said courts.
JUDGES OF THE SUPERIOR COURT.

2. That the sheriff so appointed, shall only hold his office during the term of the court at which he was appointed, and the clerk so appointed, by virtue of the authority aforesaid, shall hold his office during the term, and for four days thereafter.

3. That if any county shall refuse or neglect to elect a clerk or sheriff, for sixty days after a vacancy shall have occurred in either of the said offices, that suitors and plaintiffs may apply to any clerk or sheriff of an adjoining county, and have the required duty performed by them or either of them, in the same manner as a clerk or sheriff in said county might have done.—Act of 1842; pamp. p. 163.

From and after the 25th of November next, the judges of the superior courts of this State be, and they are hereby prohibited from practicing as attorneys,proctors or solicitors in the district or circuit courts of the United States for the district of Georgia.—Act of 1824; Prin. Dig. 458.

That no person who has been, or may hereafter be elected to the office of the judge of the superior court of this State, shall plead or practice in any of the courts of law or equity of this State, within the judicial district for which he may be, or may have been elected, between the time of his election and qualification as judge of the superior court, and any person violating the provisions of this act, shall be guilty of a misdemeanor and punished accordingly, at the discretion of the court—Provided always, that this act shall not prevent any such person from appearing in a prosecuting or defending any cause in which he may have been actually employed at the time of his election.—Act of 1843; pamp. p. 119.

Dedimus.

STATE OF GEORGIA.

By George W. Crawford, Governor of said State.

To the Honorable, the Justices of the Inferior Court, of the County of Houston.

Whereas, in conformity with his election, I have, this day, commissioned John Doe, one of the Judges of the Superior Courts, of this State, for the term of four years, from the date of said commission, ensuing; and whereas, the said John Doe, cannot attend at the Executive Department, to qualify for said office, without great inconvenience, I have selected you, the said Justices, or a majority of you, to administer to him, the said John Doe, the oath of office, as annexed; and upon his taking and subscribing the same, you will certify your proceedings to me, that the same may become a record.

Given under my hand and the seal of the Executive, at the Capitol, in Milledgeville, the thirtieth day of April, in the year of our Lord one thousand eight hundred and forty-five, and of the Independence of the United States of America, the sixty-ninth.

[L. S.] By the Governor, George W. Crawford.

John S. Weed, S. E. D.

Oaths.

STATE OF GEORGIA, } I, John Doe, do solemnly swear, that I will
Houston County. } bear true faith and allegiance, to the State of
Georgia, and to the utmost of my power and ability, observe, conform
to, support and defend, the Constitution thereof, without any reservation or equivocation whatsoever, and the Constitution of the United States; and I do further swear, that I am not the holder of any public moneys, unaccounted for—so help me God.

Sworn to and subscribed, before us, this May 1, 1845.
Edwin M. Clark, J. I. C.
Asa Boyle, J. I. C.
James Skinner, J. I. C.

JOHN DOE.

STATE OF GEORGIA.

By George W. Crawford, Governor of said State.

To the Honorable John Doe.

Whereas, you have been elected, by the Legislature of said State, one of the Judges of the Superior Courts of said State, for the term of four years, from this date, next ensuing:

These are, therefore, in virtue of such election, to authorise and empower you, the said John Doe, and you are hereby authorised and empowered, to do, transact and perform, all and singular the duties and functions of a Judge of the Superior Courts of the said State, agreeably to the laws and Constitution of this State. This commission to continue in force, until a successor is appointed, in the mode pointed out by the Constitution; and for so doing, this shall be your warrant and commission.

Given under my hand, and the great seal of the State, at the Capitol, in Milledgeville, the thirtieth day of April, in the year of our Lord one thousand eight hundred and forty-five, and the sixty-ninth of American Independence.


Commission.

JOHN S. Weed, Sec'y of State.
CHAPTER IV.

ATTORNEY AT LAW.

No person shall be debarred from advocating or defending his cause before any court or tribunal, either by himself or counsel, or both.—Prin. Dig. 911.

These attorneys are now formed into a regular corps; they are admitted to the execution of their office by the superior courts of Westminster Hall; and are in all points officers of the respective courts in which they are admitted. —3 Blac. Com. 26.

I shall consider in this place, particularly, the liabilities of attorneys. Where from any neglect, mismanagement, or corruption of an attorney, the client suffers any loss in his suit, or otherwise, he shall recover damages against him. As where in an action, wherein the plaintiff had a verdict, and the defendant in that suit, having surrendered himself in discharge of the bail, the attorney neglected to charge him in execution, whereby he was discharged, action was held to lie against the attorney for such neglect; but the damages will not be to the amount of the judgment, if the defendant in the first action was in insolvent circumstances.

Where an attorney had a note to collect against a solvent person, and neglected to put it in suit till he became insolvent, he was held to be responsible for the debt. So if an attorney employed in a suit, should fail to appear at court, and should suffer the action to be non-suited, or defaulted, he would be liable for the consequences.

If an attorney, in the conduct of a suit against any person, is guilty of any dishonest or unwarrantable practices, he is subject to an action by the party aggrieved.

If any attorney should bring a suit, or appear for any person without authority, he will be liable to an action.—1 Swift's Dig. 548.

An attorney will not be liable for a mere mistake, or misjudging on point of law, as where he brings an improper action.

Though an attorney is liable for a debt lost by his negligence, yet he is not of course liable for the loss of the evidence of a debt, and in a suit brought against him for such loss, it is competent for him to show that the plaintiff had another remedy, which he has successfully pursued.—1 Swift's Dig. 549.

An attorney who undertakes the collection of a debt, and commences a suit, upon which the debtor is held to bail, will be liable to an action by his client for negligence, if he neglects seasonably to sue a scire facias, if non est inventus be returned on the execution.—1 Swift's Dig. 549.

The only connection between individuals that excludes one from being a witness, is that of attorney and client; and to this confidence which the client must repose in his legal adviser, the law has attached so sacred an inviolability, that it will not compel, nor even suffer those who are thus employed, to dis-
close any facts stated to them confidentially in the way of their profession, even after the cause in the course of which they were communicated is entirely concluded. Thus, an attorney is not bound to obey subpœna duces tecum to produce papers against his client on an indictment for perjury. And this rule extends also to an interpreter who may be employed on the part of an alien, ignorant of the language, to communicate his instructions to his attorney. This protection does not extend to any confidence but that which is placed in a legal adviser; and physicians and Catholic priests have been compelled to disclose the most delicate and confidential communications.—2 Swift's Dig. 410.

It is provided, also, that if any serjeant, pleader, or other, do any manner of deceit or collusion in the king's court, or consent unto it, in deceit of the court, or to beguile the court, or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man; and if he be no pleader, he shall be imprisoned in like manner by the space of a year and a day at least; and if the trespass require greater punishment, it shall be at the king's pleasure.—Sch. Dig. 89.

Note.—Judge Schley makes the following note to the above statute: "Counselors and attorneys, using deceitful practices in maintenance of their clients' causes, are punishable by the common law, as well as by this statute. It is an offence within this statute for an attorney to sue out an habere facias seizinam, falsely reciting a recovery where there was none, and by color thereof to put the supposed tenant in the action out of his freehold. Also, it is an offence within this statute, to bring an action against a poor man, having nothing in the land, on purpose to oust the true tenant; or to procure an attorney to appear for a man, and confess a judgment without any warrant; or to plead a false plea, known to be utterly groundless, and invented merely to delay justice, and to abuse the court. 4 Bac. Abr. 492. These cases are quoted merely as examples, but there are various other cases of fraud and deceit which come under this statute, and which are practiced only by unworthy members of the profession."

Prayen the commons in this present parliament assembled, that where the king our sovereign lord, of his most gracious disposition, willeth and intendeth indifferent justice to be had and ministered according to his common laws, to all his true subjects, as well to the poor as rich, which poor subjects be not of ability ne power to sue according to the laws of this land for the redress of injuries and wrongs to them daily done; as well concerning their persons and their inheritance, as other causes: for remedy whereof, in the behalf of the poor persons of this land, not able to sue for their remedy after the course of the common law; be it ordained and enacted by your highness, and by the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, that every poor person, or persons, which have, or hereafter shall have, cause of action or actions against any person or persons within this realm, shall have by the discretion of the chancellor of this realm, for the time being, writ or writs original, and writs of subpœna, according to the nature of their causes, therefore nothing paying to your highness for the seals of the same, nor to any person for the writing of the same writ and writs to be hereafter sued; and that the said chancellor for the time being shall assign such of the clerks which shall do and use the making and writing of the same writs, to write the same ready to be sealed, and also learned counsel and attorneys for the same, without any reward taken therefore; and after the said writ or writs be returned, if it be afore the king in his bench, the justices there shall assign to the same poor person or persons, counsel learned, by their discretions, which shall give their counsels, nothing taking for the same: and likewise the justices shall appoint attorney and attorneys for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall
do their duties without any reward for their counsels, help, and business in the same; and the same law and order shall be observed and kept of all such suits to be made above the king's justices of his common place, and barons of his exchequer, and all other justices in the courts of record where any such suit shall be.—Sch. Dig. 144.

1. From and after the passage of this act, all contracts made and entered into between party or parties, plaintiff or defendant, and attorney or attorneys at law, in writing or otherwise, shall be held and deemed null and void, whenever the said attorney or attorneys shall fail to attend in person, or by some competent attorney, to the suit or suits which he or they contracted to do until the rendition of a judgment.

2. If any attorney or attorneys at law, as aforesaid, shall transfer any note or notes, obligation or obligations, in writing taken or received for his or their services as attorney or attorneys as aforesaid, and shall fail to attend to the suit or suits, in person or by some other competent attorney, until the rendition of a judgment, he or they shall forfeit and pay to the person or persons, whom the same was taken from, double the amount so transferred, recoverable in any court having jurisdiction of the same.—Act of 1831; Prin. Dig. 44.

26. And if any party, plaintiff or defendant, be hereafter non-suited or cast, by reason of the neglect or misconduct of the attorney, who shall hereafter bring or be employed in such suit, in all cases the said attorney shall pay all costs that may accrue thereby, and the court shall immediately enter up judgment accordingly for the same.—Act of 1789; Prin. Dig. 427.

1. That where any attorney shall institute a suit in any of the courts of this State, for and in behalf of any person or persons who resides or reside out of this State, or out of the county in which the defendant or defendants may reside, and in which such suit may be tried, such attorney shall be liable to pay all costs, in case such suit shall be dismissed, or the plaintiff or plaintiffs be cast in his, her, or their suit, and it shall be lawful for the clerk of said court to issue execution against said attorney or attorneys for the amount of the cost of said suit.

2. Where any attorney shall institute a suit in any of the counties of this State for any person who resides out of the county in which such suit is brought, and judgment shall be obtained thereon, and the sheriff shall return the execution, no property to be found, that then the plaintiff’s attorney shall be bound for the costs of said suit, and the clerk may issue his execution against the plaintiff and the attorney who brought said suit jointly for the amount of the cost of such suit; and if any attorney shall retain in his hands any money received by him for any client, after being by the court ordered to pay over the same to the principal, he shall be struck from the list of attorneys, and never more suffered to plead in any of the courts of this State.—Act of 1812; Prin. Dig. 439.

An act to continue in force the act passed on the seventh of December, 1812, entitled "an act to amend and explain the twenty-ninth section of the judiciary law of this State," and to require non-resident attorneys to pay costs in certain cases commenced by them.

Whereas, it is held, in some of the judicial circuits of this State, that the said act, so far as the same relates to the liability of attorneys for costs, has been repealed by the act passed on the twentieth day of December, 1834, entitled "an act to define the mode in which cost, under the act, entitled an act, to revise and amend an act, for ascertaining the fees of public officers of this State," passed 18th December, 1792, shall be taxed and collected in future, which repeal was not contemplated by the legislature; therefore—
1. That the said first recited act be, and the same is hereby fully re-enacted, and continued in full force.

2. That it shall and may be lawful for the proper officers to demand and receive their full costs from any attorney who resides out of this State, before they shall be bound to perform any service in any cause commenced by said attorney, where the plaintiff shall reside out of this State, or any county thereof.—Act of 1839; pamph. p. 144.

1. From and after the passage of this act, it shall be the duty of the sheriffs, coroners, justices of the peace, constables, clerks of the superior and inferior courts, and attorneys at law, in this State, upon application, to pay to the proper person or persons, his, her, or their attorney, any money or moneys they may have in their hands; and if not promptly paid, the party or parties entitled thereto, his, her, or their attorney may serve said officer with a written demand for the same; and if not then paid, for such neglect or refusal the said officer shall be compelled to pay at the rate of twenty per cent. per annum, upon the sum he has in his hands, from the date of such just demand, if good cause be not shown to the contrary.

2. A copy of said demand produced into court, verified by affidavit, stating when and where the original was served upon the officer, shall be prima facie evidence of the date and service thereof.—Act of 1822; Prin. Dig. 453.

Demand.

STATE OF GEORGIA, }

$500; interest, $25; costs, $15.

Principal debt, $500; interest, $25; costs, $15.

To Robert Welch, Sheriff, of said county:—You are hereby required to pay over to me, instanter, the amount of principal, interest and costs, due on the above fi. fa., collected by you from the sale of the defendant's property, as in default thereof, twenty per cent. per annum will be required. May 1, 1846.

Simón Wake, Plaintiff's Atty.

Personally, appeared before me, James Mack, a Justice of the Peace, in and for said county, Simón Wake, attorney at law, for the plaintiff, in the above notice, who being duly sworn, deposeth and saith, that he served Robert Welch, Sheriff of said county, with the original of the above copy notice at Perry, in said county, on the first day of May, eighteen hundred and forty-six.

James Mack, J. P.

Sworn to and subscribed, before me, this July 1, 1846.

James Mack, J. P.

1. From and after the passage of this Act it shall and may be lawful for any judge of the superior courts in this State, in term time of any of said superior courts, upon application being made and filed in writing, to cause a license to be issued by the clerk of said court to any attorney or solicitor from any of the adjoining States or Territories, to plead and practice in any of the courts of law and equity in this State, as fully as if such applicant were a citizen of Georgia; Provided, said applicant shall, before the granting of such license, produce to the judge aforesaid, a certificate from some one of the judges of the superior, circuit or district courts of the State or Territory of which he is a citizen, under the seal of said court, stating that he is of good moral character, and that he has been regularly admitted to plead and practice law in such State.
or Territory, and is at the date of such certificate a practicing attorney of such State or Territory.

2. The clerk of the superior court who issues such license shall be entitled to and receive the same fee therefor, to be paid by said applicant, as is usually paid by persons admitted, who are citizens of this State.—Act of 1829; Prin. Dig. 43.

Petition.

STATE OF GEORGIA,

To the Honorable Hugh Burns, one of the Judges of the Superior Court of said State.

The petition of John Doe, respectfully showeth, that your petitioner is a practicing Attorney, in the State of Alabama, (in which State petitioner resides; which appears from the accompanying commission;) that your petitioner is desirous of becoming a practitioner of law, in the courts of the State of Georgia; wherefore, your petitioner prays the passing of an order, by your honor, in conformity with the Statute in such case made and provided; and, as in duty bound, your petitioner will ever pray, &c. This, May 1, 1846.

John Doe.

Certificate.

STATE OF ALABAMA,

To the Judges of the Superior Courts of the State of Georgia.

This is to certify, that John Doe, Esq., is of good moral character; has been regularly and legally admitted to plead and practice law, in this State; and further, that said John Doe, Esq., is, at the date of this certificate, a practicing Attorney, of this State.

To which I have caused the seal of the Superior Court, of said State and county, to be annexed, this May 1, 1846.

Richard Roe, J. S. C.

1. From and after the passage of this Act, the attorney-general and the solicitors-general of this State, shall be subject to a rule of court to compel them to pay over moneys collected by them for the State, under the same rules and regulations as govern attorneys and counsellors at law, when they neglect or refuse to pay over moneys collected for their clients.

2. Any practicing attorney at law when employed for that purpose by the governor, treasurer, or comptroller-general, shall be fully competent to prosecute such rule against any defaulting attorney or solicitor-general; any law, usage or custom to the contrary notwithstanding.

3. The judges of the superior courts shall have power to imprison as for a contempt, such defaulting solicitor or attorney-general, and during such imprisonment said courts shall have power to appoint, temporarily, some attorney to execute the duties of such delinquent solicitor or attorney general.—Act of 1826; Prin. Dig. 833.

7. Whenever any public money shall have been collected by or paid over to the attorney or solicitors-general, and they detain the same more than one month in their hands, they shall pay twenty per centum per annum thereon until it is paid into the treasury.—Act of 1823; Prin. Dig. 833.

37. It shall be the duty of the State's attorney and solicitors, or one of them, to prosecute all delinquents for crimes and other offences, cognizable by the said courts, and all civil actions in which this State shall be concerned, and to
give advice or opinion in writing to his excellency the governor, in questions of law in which the State may be interested. And in case it should so happen, that neither the State's attorney or solicitors, or either of them, can attend the said courts, then the judge presiding may, and he is hereby authorised and required, to appoint some attorney at law, to prepare and prosecute the indictments and other business of the State; and such person so appointed shall be entitled to the same fees and emoluments therein, as the State's attorney or solicitors would have been entitled to.—Act of 1799; Prin. Dig. 428.

1. From and after the passing of this Act, all, and every person or persons whatsoever, who are citizens of this State, may, on application to the judge of the superior court, be admitted to practice as an attorney; Provided, such person shall produce satisfactory evidence of his moral rectitude, and shall undergo an examination in open court, upon a day assigned for that purpose, by the judge; any law, usage, or custom to the contrary notwithstanding.

2. The rule of court relative to the admission of attorneys, which requires the applicant to study any particular length of time in the office of any judge or practitioner of law, be, and the same is hereby declared to be abrogated, and void.—Act of 1806; Prin. Dig. 43.

Every person making application for admission to the bar, must apply to some superior court in this State, and produce satisfactory evidence to the court of his being twenty-one years of age, of good moral character, and of his having read law. A certificate of good moral character, and of the applicant's being of full age, signed by any judge of the superior court in this State, or any reputable practicing attorney thereof, will be deemed sufficient; but from all other persons, a written affidavit will be required—and shall undergo the whole examination touching his qualification, in open court. All applicants for admission shall be examined on the principles of the common and statute law of England, in force in this State; the principles of equity; the constitution of the United States; and of the State of Georgia; the statute laws of this State, and the rules of court. And in no case shall any person be admitted who shall not be considered by the court to be qualified for the practice of the law. And the following oath shall be administered to every applicant upon his admission, viz:

"I, A B, do solemnly swear, (or affirm, as the case may be,) that I will, justly and uprightly, demean myself, according to the laws, as an attorney, counsellor and solicitor; and that I will support and defend the Constitution of the United States, and the Constitution of the State of Georgia—So help me God."

After which the following commission shall be issued by the clerk:

STATE OF GEORGIA.

At a Superior Court, holden in and for the County of Houston, at April term, 1846.

Know all men by these presents, that at the present sitting of this court, A B made his application, for leave to plead and practice, in the several courts of law and equity in this State; whereupon, the said A B having given satisfactory evidence of his good moral character, and having been examined, in open court, and being found well acquainted with and skilled in the laws, he was admitted by the court, to all the privileges of an Attorney, Solicitor and Counsellor, in the several courts of law and equity, in this State.
In testimony whereof, the presiding judge has hereunto set his hand with the seal of the court annexed, this tenth day of April, in the year 1846.

C. D., Judge Superior Court.

E. F., Clerk.—8th com. law rule.

Petition.

STATE OF GEORGIA, \\
Houston County. \\

To the honorable Hugh Burns, one of the Judges of the Superior Courts of said State, presiding in the county aforesaid.

Your petitioner respectfully showeth, that with a view to the practice of the law, your petitioner has, for a length of time, applied himself to its study; that supposing, now, he may safely go into its practice, he prays the appointment of a committee, for his examination, at such time as may suit your honor, during the present term of the court; and as in duty bound, your petitioner will ever pray, &c.

April 1, 1846.

John Doe.

Certificate of Character.

STATE OF GEORGIA, \\
Houston County. \\

To the honorable Hugh Burns, one of the Judges of the Superior Courts of said State.

The undersigned certifies, that he has, for a number of years, been acquainted with John Doe, Esq., that he is twenty-one years of age, (and upwards,) that he is of good moral character, and for the last two years, has studied law. April 1, 1846.

Richard Roe, Atty at Law.

1. From and after the passage of this act, it shall be the duty of the Attorney and Solicitors General of this State, and they are hereby required, before they are qualified and enter upon the duties of their respective offices, to give bond and security to the Governor for the time being, and his successors in office, which shall be judged of and approved by him, in the sum of $20,000, which said bond shall be conditioned to pay over to the Comptroller General of the State, all moneys collected as Attorney General or Solicitors of their several circuits, or otherwise, in behalf of the State, to which the State may be entitled; also, the amount of all sums incurred by said Attorney and Solicitors General, by reason of failure to pay over the same according to the act of 1823, and do and perform all other duties required of them by law, which said bond shall be filed in the Comptroller General's office, subject to the order of the legislature.

2. It shall be the duty of the Attorney General and Solicitors General to make an annual report of the state and standing of the claims in favor of the State, under their control, to the Comptroller General at the commencement of the session of the legislature, showing what suits are instituted, and when instituted, and what money may have been collected during the preceding year, also on what cases collected.

3. It shall be the duty of the Comptroller General to report to the legislature at its annual session, all arrears or neglect of duty by the Attorney General, or either of the Solicitors General; any law to the contrary notwithstanding.—Act of 1828; Prin. Dig. 834.

1. That in all cases hereafter, where any writ of scire facias shall be issued
to enforce a recognizance, (on the criminal side of the Superior Court,) the Attorney General or Solicitor General shall be entitled to a fee of five dollars, to be taxed in the bill of costs.

2. That in all cases, where an information shall be filed, or a scire facias shall be issued for the purpose of procuring a forfeiture of the charter of any corporation, the Attorney General, Solicitor General, shall be entitled to fee of one hundred dollars, to be taxed in the bill of costs.—Act. of 1839; pamp. p. 147.

CHAPTER V.

NOTE—CHECK—BILL.

But there is one species of debts upon simple contract, which, being a transaction now introduced into all sorts of civil life, under the name of Paper Credit, deserves a more particular regard: these are debts by bills of exchange, and promissory notes.—2 Blac. Com. 466.

A promissory note is a promise to pay money, or any article which is the subject of the sale. And it is not under seal, it is, by the common law, deemed to be a simple contract, and a consideration is essential to its validity. To avoid the necessity of showing this, it is the universal practice to express it to be, for value received, in the note itself. This is prima facie evidence of a consideration, sufficient to throw on the maker the burden of proving there was no consideration.—1 Swift's Dig. 429.

Promissory notes, or notes of hand, are a plain and direct engagement in writing, to pay a sum specified at the time therein limited, to a person therein named, or sometimes to his order, or oftener to the bearer at large.—2 Blac. Com. 467; Chit. on Bills, 324; 1 Sel. N. P. 393.

The person who makes the note is called the maker, and the person to whom it is payable the payee, and the person to whom he transfers the interest by endorsement, the endorsee.—Chit. on Bills, 324.

1. Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That all notes in writing, that after the first day of May, in the year of our Lord one thousand seven hundred and five, shall be made and signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant or trader, who is usually entrusted by him, her or them, to sign such promissory notes for him, her or them, whereby such person or persons, body politic and corporate, his, her or their servant or agent as afore-
said, doth or shall promise to pay to any other person or persons, body politic and corporate, his, her or their order, or unto bearer, any sum of money mentioned in such note, shall be taken and construed to be, by virtue thereof, due and payable to any such person or persons, body politic and corporate, to whom the same is made payable, and also every such note payable to any person or persons, body politic and corporate, his, her or their order, shall be assignable or endorsable over, in the same manner, as inland bills of exchange are or may be, according to the custom of merchants; and that the person or persons, body politic and corporate, to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same, in such manner as he, she or they might do upon any inland bill of exchange, made or drawn according to the custom of merchants, against the person or persons, body politic and corporate who, or whose servant or agent as aforesaid, signed the same; and that any person or persons, body politic and corporate, to whom such note that is payable to any person or persons, body politic and corporate, his, her or their order, is endorsed or assigned, or the money therein mentioned ordered to be paid by endorsement thereon, shall and may maintain his, her or their action for such sum of money, either against the person or persons, body politic and corporate, who, or whose servant or agent as aforesaid, signed such note, or against any of the persons, that endorsed the same, in like manner as in cases of inland bills of exchange.—Sch. Dig. 320.

A bill may be drawn payable to bearer, and in such case it will be transferable by delivery; and a bill or note payable to J. S. or bearer is, in legal effect, payable to the bearer, and J. S. is a mere cypher.—Chit. on Bills, 63.

$100. On, or before, the first day of January next, I promise to pay John Doe, or bearer, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

When a promissory note is made by several, and expressed "we promise to pay," it is a joint note, only; but if a note be signed by several persons, and begin "I promise," &c. it is several as well as joint, and the parties may be sued jointly or severally.—Chit. on Bills, 338; 1 Sel. N. P. 400.

$100. Six months after date, we promise to pay John Doe, or bearer, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

John Stone.

$100. Eight months after date, I promise to pay John Doe, or bearer, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

John Stone.

$100. Seven months after date, we, or either of us, promise to pay John Doe, or bearer, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

John Stone.

A bill or note payable to the order of the plaintiff, may be stated in the declaration to be payable to him, and there is no occasion to insert any averment that he made no order.—Chit. on Bills, 356; 1 Sel. N. P. 336.

Where the note is payable to order, there must be a written endorsement by the payee, to vest the property in the endorsee, and enable him to sue in his own name.—1 Swift's Dig. 439.
$100. Two months after date, I promise to pay John Doe, or order, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

$100. Two months after date, I promise to pay to the order of John Doe, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

4. When any person or persons hath heretofore or shall hereafter become bail on recognizance or security, on bond, note, or other contract, and shall be sued thereon, it shall and may be lawful for such bail or security on the trial of such case to make special defence; and in case it should appear to the court that one or more of the defendants is or are securities only, and not interested in the consideration of the contract sued on, then and in such case verdict and judgment shall be entered accordingly, and further proceedings had, and privileges exercised as hereinafore prescribed in behalf of the other securities; provided, the plaintiff shall in no case be delayed by any dispute which may arise between the defendants, but the Court shall decide the issues, and the verdict which may have been finally rendered on the issue, between the defendants, shall relate back to the time of the verdict and judgment in favor of the plaintiff.

5. In all cases in which any person or persons hath heretofore become security in the manner hereinbefore specified, and judgment has been rendered against him or them, and execution has been issued accordingly, in which they may be able to show that he or they were security only, and as such hath or have been paid off and discharged such execution, such security or securities shall have the benefit thereof, and power to control the same, for the purpose of indemnifying himself or themselves out of the property of the principal.

6. When any security to any note, bond, or obligation, shall subscribe himself as security, such statement appended to his name on the said note, bond, or obligation, shall be held and taken as good evidence of his being such security, and the plaintiff shall sue out original and mesne process against him accordingly.—Act of 1826; Prin. Dig. 461.

That from and immediately after the passage of this act, it shall and may be lawful for any person or persons who have heretofore become security on any note, bond, or other instrument, writing, and not interested in the consideration, and judgment has been rendered against them, and such security or securities have been heretofore compelled to pay off such judgment, or may hereafter be compelled to pay off such judgment, he, she or they, shall be entitled to the control of the same, and be permitted to use and control the same in as full and ample a manner as the party plaintiff could have done against the principal debtor or debtors. Provided always, That it shall be made satisfactorily appear to the court where said judgment was rendered, that such person or persons assuming to have the control of any judgment as aforesaid, were bona fide security or securities only, upon the original bond, note, or other instrument, which was the foundation of the judgment. Provided further, That this act shall not affect the rights of any bona fide purchaser, without actual notice of such securityship and judgment acquired before the passage of the same.—Act of 1845; Pamp. p. 41.

Note.—The party applying for relief under these statutes should present his petition to the court, after having given his alleged principal twenty days’ previous notice thereof, and should be prepared to prove the fact of his being the security, and of his having paid off the judgment.

$100. One month after date, we, or either of us, promise to pay John Doe, or bearer, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

John Stone, security.
§100. One month after date, I promise to pay John Doe, or bearer, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.
John Stone, security.

§100. One month after date, we promise to pay John Doe, or bearer, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.
John Stone, security.

25. All bonds and other specialties, and promissory notes, and other liquidated demands, bearing date since the 9th day of June, 1791, whether for money, or other thing, shall be of equal dignity and be negotiable by endorsement, in such manner and under such restrictions as are prescribed in the case of promissory notes: provided that nothing herein contained shall prevent the party giving any bond, note, or other writing, from restraining the negotiability thereof, by expressing in the body thereof such intention.—Act of 1799; Prin. Dig. 426.

§100. Ten months after date, I promise to pay John Doe one hundred dollars, for value received; this note not to be negotiable; this May 1, 1846.

Richard Roe.

That on every bond, note, or other instrument in writing, or verbal contract for the payment of negroes, produce, stock, goods, or other specific articles, of any nature or kind whatsoever; the price of such specific article at the time it became due, upon such bond, note, or other instrument in writing, or verbal contract as aforesaid, and having respect to the place, made payable according to contract, if any, shall be the sole and established rule of valuation: and all and every such bond, note, or other instrument in writing, or verbal contract, for specific articles, as aforesaid, shall bear interest at eight per cent. from the time they become due, in like manner as if given for the payment of money simply; any law to the contrary notwithstanding.—Act of 1800; Prin. Dig. 813.

Twelve months after date, I promise to pay John Doe, or bearer, ten good Cows and Calves, for value received; this May 1, 1846.

Richard Roe.

§100. One day after date, I promise to pay John Doe, or bearer, one hundred dollars, for value received; witness my hand and seal; this May 1, 1846.

Richard Roe. [L. S.]

If it be intended that the bill shall be payable at a particular place, the drawer should so frame the bill, expressly stating that it shall not be payable elsewhere, which he may do either in the body of the bill, or in the direction to the drawee, as by the words, “payable in London only, and not otherwise or elsewhere.”—Chit. on Bills, 61.

Where a note, or bill of exchange, is payable at a particular place mentioned in the note or bill, it is not necessary for the payee, drawee, or endorsee, to present the note, or bill, at the place, when it arrives to maturity, and demand payment, for the purpose of subjecting the maker of the note or the acceptor of the bill; but he can maintain an action without making such presentment and
NOTE—CHECK—BILL.

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demand. The maker of the note, and the acceptor of the bill, may tender payment at the time and place, and if the payee or endorsee, is not present to receive the money, still the tender will be good, and may be pleaded in bar of an action on the bill, or note; but if no tender be made, then an action lies on the note, or bill, though no presentment or demand was made at the place. But it is necessary for the payee, or endorsee, to make such presentment and demand, for the purpose of enabling him to go back on the endorser, in case of the insolvency of the maker or acceptor: for the endorser becomes liable on condition that the endorsee uses due diligence in the collection of the note, or bill.—1 Swift's Dig. 431.

On the other hand, both the courts agreed that if a promissory note were made payable generally in the body of it, and there was a memorandum only, at the foot, denoting that payment should be made at a particular place, such memorandum would not qualify the contract, and it was not necessary for the holder to allege or prove any presentment at the particular place; and if it be alleged in the declaration that the defendant made the note payable at the particular place, and that direction were not on the instrument itself, but merely at the foot, this even would be a fatal misdescription of the instrument.—Chit. on Bills, 253.

§100. Six months after date, I promise to pay John Doe, or bearer, at the Commercial Bank of Macon, in the city of Macon, Georgia, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

Bank Note.

§100. Sixty days after date, I promise to pay to the order of John Doe, at the Commercial Bank of Macon, one hundred dollars, for value received; this May 1, 1846.

Richard Roe.

Note.—For the purpose of inducing the bank to discount it, the above note must be endorsed by the payee and one or more responsible endorsers after him.

A check, or draft, on a banker, is a written order or request, addressed to persons carrying on the business of bankers, and drawn upon them by a party having money in their hands, requesting them to pay on presentment, to a person therein named, or to bearer, a named sum of money.

It nearly resembles a bill of exchange, but it is uniformly made payable to bearer, and must be drawn upon a regular banker.—Chit. on Bills, 322.

It was once thought, that a check or draft on a banker is not negotiable generally, but only so within the bills of mortality; but it is now settled, that they are as negotiable as bills of exchange, though, strictly speaking, they are not due before payment is demanded, in which respect they differ from bills of exchange or promissory notes, payable on a particular day. By a general rule of law a banker's check is not money, it is a mere chose in action, not assignable and not recoverable by action; but in practice, they are taken in payment as cash.—Chit. on Bills, 322.

It is said that checks are not protestable; and this doctrine seems to be correct, because checks are payable on presentment, and the statute 9 & 10 W. 3. c. 17 [Sch. Dig. 108.] applies only to bills of exchange payable after the date.—Chit. on Bills, 323.

In the ordinary course of business, a check cannot be circulated or negotiated so as to affect the drawer, who has funds in the hands of the bankers, after banking hours of the day after he first issues it.—Chit. on Bills, 323.
With respect to the time when checks should be presented for payment, the general rule seems to be, that it suffices to present it at any time during banking hours of the day after it was issued.—Chit. on Bills, 323.

Most of the rules respecting bills of exchange affect checks on bankers, and therefore it may suffice to refer to the preceding part of the work, and to the Index, tit. check.—Chit. on Bills, 323.

Check.

**Bank of the State of Georgia,**

$1000.

Savannah, May 1, 1846. *

Pay, to the order of John Doe, one thousand dollars.

Richard Roe, Cashier.

To the Cashier Planters' Bank, Savannah.

A bill of exchange is a security, originally invented among merchants in different countries, for the more easy remittance of money from the one to the other, which has since spread itself into almost all pecuniary transactions. It is an open letter of request from one man to another, desiring him to pay a sum named therein, to a third person on his account, by which means a man at the most distant part of the world may have money remitted to him from any trading country.—2 Blac. Com. 466; 1 Swift's Dig. 418; 1 Sel. N. P. 317.

Bills are foreign or inland. Foreign bills are either drawn or payable in foreign countries. Inland are drawn and payable in our own country. There is little difference between them, excepting that foreign bills must be protested by a notary public, for non-acceptance and non-payment, and on which greater damages may be allowed than upon inland bills.—2 Blac. Com. 467; 1 Swift's Dig. 418; Chit. on Bills, 12.

Besides these principal qualities which bills of exchange must possess, there are certain other matters proper to be attended to in the formation of them: these are, 2dly, that in certain cases the instrument be properly dated. 3dly, that the time of payment be clearly expressed. 4thly, that it contains an order, or, at least, a request to pay. 5thly, that in the case of a foreign bill drawn in sets, each set contain a proviso that it shall only be payable in case the others are not paid. 6thly, that it be clearly expressed to whom the bill is payable. 7thly, that when the instrument is intended to be negotiated, there be words inserted, giving the power of transfer. 8thly, that the money to be paid be distinctly and intelligibly expressed. 9thly, that in certain cases, value received be inserted. 10thly, that under particular circumstances, a bill state whether it is to be paid with or without further advice. 11thly, that the drawer's name be clearly signed. 12thly, that the bill be properly addressed to the drawee. And, lastly, that when the bill is to be paid at a certain place, that place be properly described.—1 Swift's Dig. 419; Chit. on Bills, 50.

A bill of exchange differs from most other contracts, in the circumstance that it has usually three parties, the person making it, called the drawer; the person to whom it is directed, who, before the acceptance, is called the drawee, and after, the acceptor, and the person in whose favor it is drawn, who is called the payee. Sometimes there are only two parties, as where a person draws a bill on another, payable to his own order, and a bill will be valid if there is only one party, as where a man draws a bill on himself, payable to his own order, and endorses it; though this is in the nature of a pro-
NOTE—CHECK—BILL.

Whenever any bill of exchange hereafter to be drawn or negotiated within this State, upon any person or persons of or in any State, Territory or district of the United States, shall be returned unpaid, and shall have been duly protested for non-payment in the manner usual in cases of foreign bills of exchange, the person or persons to whom the same shall or may be payable, shall be entitled to recover, and receive of and from the drawer or drawers, or the endorser or endorsers of such bill of exchange, five per cent. damages, over and above the principal sum for [which] said bill of exchange shall have been drawn, together with lawful interest on the aggregate amount of such principal sum, from the time at which notice of such protest shall have been given, and the payment of the said principal sum and damages shall have been demanded.—Act of 1823; Prin. Dig. 454.

That all the provisions of said act, [act of 1823] be, and they are hereby extended to all bills of exchange hereafter drawn (in the State,) upon, or made payable any place within the United States, out of this State, without reference to the residence of the drawer or acceptor.—Act of 1839; pamp. p. 59.

1. That on the bills of exchange drawn in this State after the 31st day of January next, upon any place beyond the limits of the United States, which shall be returned protested for non-payment, it shall be lawful for the holder or holders thereof to recover from those liable for the payment thereof, the amount of the said bill of exchange, with postages, protests, other necessary expenses and interest upon the amount of these sums from the date of the protest until the time of presenting the same for payment in this State, at the rate established at the place at which the bill was payable; and also such premium upon the face of the bill and the foreign postages, protest, and necessary expenses, as good bills of exchange upon the same place which such bill was made payable, or worth, at the time and place of its demand in this State; but if such bills are then and there at a discount, the holder shall deduct such discount upon and from the items of principal, foreign postage, protest and necessary expenses.

2. It shall be lawful for the holder of such bill of exchange, so returned protested, as aforesaid, also to claim and receive from the person or persons liable therefor, damages at the rate of ten per cent. upon the amount for which the said bill was drawn.

3. It shall be lawful for the holder or holders of such bill or bills returned protested as aforesaid, to recover the legal interest established in this State, from the time of presentment for settlement until paid, upon the sum or sums to which he would be entitled by the before-mentioned mode of settlement.—Act of 1827; Prin. Dig. 462.

Foreign Bill.

MACON, May 1, 1846.

Exchange for $1000.

At two usances, (or "at sight," or "after date,";) pay this my first bill of exchange, (second and third, of the same tenor and date, not paid) to Messrs. Small & Wood, or order, ("or bearer;") one thousand dollars; value received of them, and place the same to account, as per advice from Richard Roe.

To Mr. John Doe, in Liverpool: }

payable at Liverpool. 
NOTE—CHECK—BILL.

Inland Bill.

Macon, May 1, 1846.

$1000.

At sight, (or, "on demand," at ten days after sight," "at ten days after date," ) pay to Mr. John Doe, or order, ("or bearer," ) one thousand dollars, for value received. Richard Roe.

To James Short, merchant in Savannah: payable at Savannah.

Inland bills of exchange (which are so called because they are drawn and payable in this country,) according to lord C. J. Holt’s opinion, did not originate at a much earlier period than the reign of Charles the second.—Chit. on Bills, 12.

3. Provided nevertheless, That in case any such inland bill or bills of exchange shall happen to be lost or miscarried within the time before limited for payment of the same, then the drawer of the said bill or bills is and shall be obliged to give another bill or bills of the same tenor with those first given, the person or persons to whom they are and shall be so delivered, giving security if demanded, to the said drawer, to indemnify him against all persons whatsoever, in case the said bill or bills of exchange so alleged to be lost or miscarried, shall be found again.—Sch. Dig. 309.

Bond of Indemnity.

STATE OF GEORGIA, } Know all men by these presents, that we, Houston County. } John Doe and Richard Roe, security, are held and firmly bound unto Charles Smith, in the just and full sum of one thousand dollars, for the true payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the foregoing obligation, is such that whereas, heretofore, to wit: on the first day of April, in the year of our Lord eighteen hundred and forty-six, said Charles Smith, made and delivered to said John Doe, his certain instrument, in writing, called an inland bill of exchange, for the sum of five hundred dollars, drawn at Macon, upon Gaudry & Legriel, merchants of the city of Savannah payable in the city of Savannah at sight, which bill of exchange, so drawn and delivered, as aforesaid, has been lost by said John Doe, and said John Doe having called upon and required said Charles Smith to execute another bill of exchange in lieu of the lost original, and said Charles Smith having executed and delivered another bill of exchange, in place of the original, so lost, as aforesaid: now, should the said John Doe, well and truly indemnify and save harmless, the said Charles Smith, against all persons whomsoever, and against the damages, costs and expenses, that may be recovered of him at the instance of any other person holding said bill of exchange, in case the said bill of exchange, so alleged to be lost, shall be found again, then the above obligation to be null and void; else, of full force and virtue.

Tested and approved, by

James Mack, J. P.

John Doe, [L. S.]

Richard Roe, Sec’ty. [L. S.]
Rules common to these Instruments.

Though a bill of exchange, check, promissory note, &c., should be in writing, there is in general no particular form, or set of words necessary to be adopted, any more than in the case of a bond or other deed.—Chit. on Bills, 40.

A bill of exchange being "an open letter of request by one person to another to pay money," and a promissory note being "a written promise to pay money," it follows that each must be in writing, or whilst legible it may be in pencil, and the whole of the contract must be so expressed; and according to the law of Great Britain and of other countries, no part of such contract can be established or supplied by oral testimony.—Chit. on Bills, 146.

An instrument, which, in the body of it, is in the form of a promissory note, but which is, in addition, addressed to a third person, who accepts it, is a promissory note; or it may be treated as a bill.—Chit. on Bills, 41 and 334.

There are two principal qualities essential to the validity of a bill or note; first, that it be payable at all events; not dependent on any contingent, the payable out of a particular fund; and secondly, that it be for the breach of money only, and not for the payment of money, and performed, but the plaintiff act, or in the alternative.—Chit. on Bills, 41.

So, if by the terms of the instrument, the payment of the sufficiency of a particular fund, the bill or note is for a good and valuable on Bills, 44.

And when it appears by any part of the insted on as a defence.—1. Sel. N. payable immediately, and that the payment event, it will not operate as a bill of exec value had been received, but likewise special agreement.—Chit. on Bills, 46.

The statement of a particular fact, constituted the value; but in this country it, if it be inserted merely as a basis implied in every bill and endorsement, as self.—Chit. on Bills, 49. erbis.—Chit. on Bills, 67; 1 Sel. N. P. 337.

So, though the instrument those words, an action of debt may be sustained memorandum on the backer of each.—Chit. on Bills, 67.

not be declared upon action to a bill being dated on Sunday; or it may law-

-19. Good Friday, or on Christmas day.—Chit. on Bills, 59.

And if the instrument to pay $ of a bill or note is prima facie evidence of its having been made the time, to the date. A date, however, is not, in general, essential to the the bill or a bill, for when the bill has no date, the time, if necessary to be into be p. 9, will be computed from the day it was issued.—Chit. on Bills, 59; show N. P. 332; 1 Swift's Dig. 419.

able a bill of exchange or a promissory note be altered without the consent of parties, in any material part; as in the date, sum, or time when payable, such alteration will, at common law, and independently of the stamp acts, render the bill or note wholly invalid, as against any party not consenting to such alteration; and this although it be in the hands of an innocent holder.—Chit. on Bills, 100; 1 Swift's Dig. 423.

With respect to the mode of becoming party to any one of these instruments, it is a general rule, that no person can be considered as a party to a bill, unless his name or the name of the firm, of which he is a partner, appears on some part of it; however, a person may become drawer, endorser, or acceptor, not only by his own immediate act, but also, by that of his agent or partner.—Chit. on Bills, 23; 1 Swift's Dig. 419; 1 Sel. N. P. 322.
former simple-contract debt, or of a simple-contract debt created at the time, is precluded from afterwards waiving it, and suing the person who gave it him, for the original debt before the bill is due; for the taking of the bill is *prima facie* a satisfaction of the debt, and amounts to an agreement to give the person delivering it credit for the length of time it has to run.—*Chit. on Bills*, 95.

7. And be it further enacted, That from and after the said first day of May, if any person doth accept any such bill of exchange, for and in satisfaction of any former debt, or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person, accepting of such bill for his debt, doth not take his due course to obtain payment thereof, by endeavoring to get the same accepted and paid, and make his protest as aforesaid, either for non-acceptance or non-payment thereof.—*Sch. Dig.* 325.

But the *third* description, namely, *parol or simple contracts*, which include as well unsealed written contracts as those which are merely verbal, are not in general entitled to such respect, because the law presumes that such contracts may have been made inadvertently, and without sufficient reflection, obliged to *see*, in general, they will not be enforced, unless the plaintiff can prove they were made for a sufficient consideration. It is otherwise, if demanded, *see* of a bill of exchange, it being scarcely ever necessary for whatsoever, in case that he gave a consideration for it; and the *defendant* miscarried, shall be found that he received no consideration, unless in an action *see* person with whom he was immediately concerned, the instrument, or by a person, who has given no consideration, although it is not a bill of exchange, the same presumption of a consideration as *see* and firmly bound unto Charles Smith one thousand dollars, for the true sion, a contract not under seal, will ourselves, our heirs, executors and assigns, and that it is ineffectually, firmly by these presents: sealed with in his declaration, and to prove May 1, 1846.

The condition of the foregoing obligation, they are presumed to have heretofore, to wit: on the first day of April, necessary for the plaintiff to eighteen hundred and forty-six, said Charles Smith, in the first instance, declared to said John Doe, his certain instrument, in writing, transferable by declared, sealed by the Macon, upon Gauley & Legriel, merchants of the city of Savannah, at sight, which bill of exchange, if drawn and delivered, as aforesaid, has been lost by said John Doe, being called upon and required said Charles Smith to execute another bill of exchange in lieu of the lost original, and said Charles Smith having executed and delivered another bill of exchange, in place of the original, so lost, as aforesaid: now, should the said John Doe, well and truly indemnify and save harmless, the said Charles Smith, against all persons whomsoever, and against the damages, costs and expenses, that may be recovered of him at the instance of any other person holding said bill of exchange, in case the said bill of exchange, so alleged to be lost, shall be found again, then the above obligation to be null and void; else, of full force and virtue.

Tested and approved, by

James Mack, J. P.

John Doe, [L. S.]

Richard Roe, Sec'y. [L. S.]
sufficient consideration is implied from the nature of the instrument, and its existence, in fact, is rarely necessary to be proved.—Chit. on Bills, 5, 68 and 325.

Between the drawer and acceptor, the drawer and the payee and his agent, and the endorsee and his immediate endorser, fraud, or the total want of consideration may be questioned. And although we have seen that a parol agreement to renew a bill affords no defence to an action, yet if a bill or check be given on a verbal condition, which the drawer finds is to be broken or eluded, he has a right to stop the payment, and may defend an action thereon.—Chit. on Bills, 70.

In those cases also in which a defendant would be at liberty to insist upon a total want of consideration, he may show that the consideration does not extend to all the money payable by the bill or note, and the plaintiff shall only recover for the residue; and therefore an acceptor of a bill may, in defence to an action against him by the payee, show that he accepted it for value as to a part, and as an accommodation to the plaintiff as to the rest.

But the money as to which the consideration fails, must be of a specific liquidated amount; for where a partial failure of consideration arises from unliquidated damages, sustained by the breach of a subsisting contract, the performance of which was the consideration of the bill or note, such breach of contract cannot be investigated in an action on the bill or note, but the plaintiff will be entitled to a verdict for the whole amount of the bill, leaving the defendant to his cross action.—Chit. on Bills, 71.

It will be presumed, that the note has been given for a good and valuable consideration until the contrary appears. As between the immediate parties, want or illegality of consideration may be insisted on as a defence.—1. Sel. N. P. 401; Chit. on Bills, 5, 9 and 68.

It appears that in France it was not only essential to the validity of a bill, that it should express whether or not value had been received, but likewise the nature of the consideration which constituted the value; but in this country it is otherwise for value received is implied in every bill and endorsement, as much as if expressed in toto desper. Chit. on Bills, 67; 1 Sel. N. P. 337.

And if a bill or note contain those words, an action of debt may be sustained by the payee against the maker of each.—Chit. on Bills, 67.

There is no legal objection to a bill being dated on Sunday; or it may lawfully be dated on Good Friday, or on Christmas day.—Chit. on Bills, 59.

And the date of a bill or note is prima facie evidence of its having been made on the day of the date. A date, however, is not, in general, essential to the validity of a bill, for when the bill has no date, the time, if necessary to be inquired into, will be computed from the day it was issued.—Chit. on Bills, 59; 1 Sel. N. P. 332; 1 Swift's Dig. 419.

If a bill of exchange or a promissory note be altered without the consent of the parties, in any material part; as in the date, sum, or time when payable, such alteration will, at common law, and independently of the stamp acts, render the bill or note wholly invalid, as against any party not consenting to such alteration; and this although it be in the hands of an innocent holder.—Chit. on Bills, 100; 1 Swift's Dig. 423.

With respect to the mode of becoming party to any one of these instruments, it is a general rule, that no person can be considered as a party to a bill, unless his name or the name of the firm, of which he is a partner, appears on some part of it; however, a person may become drawer, endorser, or acceptor, not only by his own immediate act, but also, by that of his agent or partner.—Chit. on Bills, 23; 1 Swift's Dig. 419; 1 Sel. N. P. 322.
NOTE—CHECK—BILL.

In the case of an agent, he must sign the name of his principal by his attorney, as A B for C D, and if he does not express for whom he signs, he will be personally liable.—1 Swift's Dig. 420.

NOTE.—Or perhaps the most authentic mode of signature, is thus: C D by A B

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Endorsement.

Every endorser of a note comes under an obligation that such note is due and valid; that the maker is of ability to pay it, and that it can be collected by use of due diligence.—1 Swift's Dig. 431.

In the first place then, the payee, or person to whom, or whose order, such bill of exchange or promissory note is payable, may by endorsement, or writing his name in dorso, or on the back of it; assign over his whole property to the bearer, or else to another person by name, either of whom is then called the endorsee: and he may assign the same to another, and so on in infinitum. And a promissory note payable to A, or bearer, is negotiable without any endorsement, and payment thereof may be demanded by any bearer of it.—2 Blac. Com. 469; 1 Swift's Dig. 430.

Thus it has been adjudged that if a man endorses his name on a blank stamped piece of paper, such an endorsement will operate as a carte blanche, or letter of credit, for an indefinite sum, consistent with the stamp; and will bind the endorser for any sum to be paid at any time, which the person to whom he entrusts the instrument chooses to insert in it; and such paper shall be considered a bill by a relation from the time of signing and endorsing.—Chit. on Bills, 124.

It has, however, long been settled on the above principle, that an endorser may restrain the negotiability of a bill by using express words to that effect, as by endorsing it, "payable to J. S. only;" or by endorsing it, "the within must be credited to J. S.," or by any other words clearly demonstrating his intention to make a restrictive and limited endorsement; but a mere omission in the endorsement, as leaving out the words "or order," will not, in any case, prevent a bill being negotiated ad infinitum.—Chit on Bills, 138.

It is competent, also, to an endorser, to make only a conditional transfer of the bill, and therefore, if the payee of a bill annexes a condition to his endorsement before acceptance, the drawee, who afterwards accepts it, is bound by that condition, and if the terms of it be not performed, the property in the bill reverts to the payee, and he may recover the sum payable, in an action against the acceptor.—Chit. on Bills, 139.

A transfer by endorsement vests in the endorsee a right of action against all the precedent parties whose names are on the bill, and after the bill has been duly endorsed by the payee in blank, it is transferable by mere delivery, and the holder may sue all parties to the bill, but unless the payee, or the drawer, when the bill was payable to his order, has first endorsed it, a party who becomes possessed of it, can only sue the person from whom he obtained it.—Chit. on Bills, 142.

If a party endorse a bill for the accommodation of the drawer, which is also accepted by a third person for the like accommodation, such endorser may, after he has been compelled to pay the bill, support an action thereon against the acceptor, or may prove it under his commission, in case of his bankruptcy. And such an accommodation endorser, in case there be reasonable ground to apprehend the insolvency of his principal, has an equitable right to withhold the payment of any money which he may owe to him, until he has been indem-
NOTE.—CHECK—BILL.

nified against any liability on account of his endorsement, though such liability would be no defence at law to an action by the principal.—Chit. on Bills, 147.

2. Any security or endorser may, whenever he thinks proper, after the note or instrument become due, require the holder to proceed to collect the same; and if he should not proceed to do so within three months, the endorser or security shall be no longer liable.—Act of 1826; Prin. Dig. 462.

That in every case which may hereafter arise, where the security or endorser of any promissory note, or other instrument, after the same has or shall become due, has required or shall hereafter require the holder thereof to proceed to collect the same, and the said holder has not proceeded or shall not proceed to do so, within three months after such notice or requisition, the endorser or security shall be no longer liable.—Act of 1831; Prin. Dig. 471.

No particular form of words is essential to an endorsement, the mere signature of the party making it, is in general, sufficient. An endorsement which mentions the name of the person in whose favor it is made, is called an endorsement in full, and an endorsement which does not, is called an endorsement in blank.—Chit. on Bills, 131.

An endorsement vests the property in the endorsee, so that the payee cannot sue, and if a note is endorsed after the commencement of a suit, the action cannot proceed, for the endorsement puts an end to the suit by vesting the property in the assignee or endorsee.—1 Swift’s Dig. 430.

We have already seen that a bill of exchange may be drawn by an agent, so also, it may be endorsed by a person acting in that capacity: in which case he must expressly endorse as agent, as “E F per proc. A B” or he may write the name of his principal; otherwise the endorsement would be inoperative. —Chit. on Bills, 133; 1 Swift’s Dig. 420.

An endorsement in blank by the payee of a note, contains a power of attorney to the endorsee, to pursue all legal measures for its collection—to apply the avails to his own use, without accountability; with a warranty that the note is due, and collectable with the use of due diligence, and that the maker is of ability to pay it, and also an engagement that the assignor will permit the assignee to make use of his name, in enforcing the collection without interference.—1 Swift’s Dig. 454.

An endorsement in blank is by far the most common, and is made by the mere writing of the endorser’s name on the back of the bill, without any mention of the name of the person in whose favor the endorsement is made, and is sufficient to transfer a right of action to any bona fide holder, and so long as it continues in blank, makes the bill or note payable to bearer; but the holder may write over it what he pleases; and a blank endorsement on a bill of exchange, conveys a joint right of action to as many as agree in suing on the bill, though such persons be not in partnership.—Chit. on Bills, 134; 1 Swift’s Dig. 426.

A note endorsed in blank, or payable to bearer, is transferable by delivery, without endorsement.—1 Swift’s Dig. 430.

It has been lately decided that an endorsement written in pencil is sufficient. —Chit. on Bills, 131.

With respect to the liability of the party transferring a bill, it is said that a transfer by endorsement, is equivalent in its effect to the drawing of a bill, the endorser being in almost every respect, considered as a new drawer on the original drawee.—Chit. on Bills, 142; 1 Swift’s Dig. 427.

Regularly a bill of exchange ought to be made payable to a real person, but if it be drawn payable to a fictitious payee or order, and endorsed in his name, by concert between the drawer and acceptor, it will be considered as a
bill payable to bearer, and may be declared on as such in an action by an innocent endorsee for a valuable consideration against the drawer, or against the acceptor.—1 Sel. N. P. 336.

Any person who shall draw or make a bill of exchange, due-bill, or promissory note, or endorse, or accept the same in a fictitious name, shall be guilty of forgery, and on conviction, be punished by confinement and labor in the penitentiary, for any time not less than two years, nor longer than seven years. —Prin. Dig. 637.

That from and after the passage of this act, in all cases where one or more persons are endorsers upon any bill of exchange, promissory note, or other instrument in writing, and separate suits may be prosecuted against such endorsers in any court of this State, it shall be the duty of the plaintiff or his attorney, in signing judgment in such suits against such endorsers, to designate and identify the contract on which such judgment is rendered, and that execution shall issue accordingly.—Act of 1845; pamph. p. 39.

Transfer.

With respect to the person who may transfer a bill or note, whoever has the absolute property may assign it if payable to order. In general, a valid transfer can only be made by the payee, or the person who is legally interested in the instrument, or by his agent, and consequently an endorsement by a person of the same name is inoperative, (except against the party making it, and the subsequent endorsers) although the person entitled to transfer the instrument, was not particularly described in it.—Chit. on Bills, 111.

On the death of the holder, the right of transfer is vested in his executor or administrator. If the executor or administrator endorse the bill or note, without qualification, he would be personally liable in case the bill should be dishonored.—Chit. on Bills, 122.

If a bill has been made or transferred to several persons not in partnership, the right of transfer is in all collectively, and not in any individually; but where several persons are in partnership, the transfer may be made by the endorsement of one partner only, in which case the transfer is considered as made by all the persons entitled to make it.—Chit. on Bills, 123.

There is a material distinction in the effect of a transfer made before a bill is due, and one made after that time; in the first case, the transfer carries no suspicion on the face of it, and the assignee receives it on its own intrinsic credit; nor is he bound to inquire into any circumstances existing between the assignor and any of the previous parties to the bill, as he will not be affected by them, unless indeed the circumstances under which the assignee takes the bill be such as to have naturally excited the suspicion of a prudent and careful man. But when a transfer of a bill is made after it is due, whether by endorsement or mere delivery, it is settled, that at least it is to be left to the jury upon the slightest circumstance, to presume that the endorsee was acquainted with the fraud, or had notice of the circumstances which would have affected the validity of the bill, had it been in the hands of the person who was holder thereof, at the time it became due; and though the endorsee may have been ignorant of the fraud, yet any objection which might have been taken against the bill when in the hands of the endorser, may be taken against him, if the bill or note, when he took it, appeared upon the face of it to have been dishonored.—Chit. on Bills, 126.

A bill payable to the order of a certain person, or to that person or order, or
assigns, or to the drawer's order, is transferable in the first instance only by endorsement.—Chit. on Bills, 131.

On delivery of a bill of exchange to the payee, or any other person who becomes holder by transfer, it is in some cases necessary, and in all advisable, to present it for acceptance.—1 Swift's Dig. 423; Chit. on Bills, 158.

Presenting, &c.

When a bill is drawn payable within a specified time after sight, it is necessary, in order to fix the period when it is to be paid, to present it to the drawee for acceptance; but in other cases it is not incumbent on the holder to present the bill before it is due.—Chit. on Bills, 158; 1 Sel. N. P. 344.

And it is said that it is incumbent on the bearer of a bill, when he is but the mere agent of the person entitled to it, and on the payee, when he is directed by the drawer to do so, to present it for acceptance so soon as possible, because it is only by acceptance that the person on whom the bill is drawn becomes debtor, and responsible to the holder; and if the affairs of the drawer should be deranged, an agent who has neglected to present the bill for acceptance, might be answerable in damages and interest to the person who employed him.—Chit. on Bills, 159.

It seems that though the drawer require the drawee not to accept the bill if presented for acceptance, yet the holder must present the bill for acceptance in order to render the drawer liable.—Chit. on Bills, 160.

The insolvency of the drawee is no excuse for not presenting a bill for acceptance.—1 Swift's Dig. 423, 428 and 431.

With respect to the time when bills payable after sight should be presented for acceptance, it has been observed, that the only rule which can be applied to all cases of bills of exchange, whether foreign or inland, and whether payable at sight, or at so many days after sight, or in any other manner is, that due diligence must be used, and, as the drawer may sustain a loss by the holder's keeping it any great length of time, it is advisable in all cases, to present as soon as possible.—Chit. on Bills, 160.

The holder of an inland bill, payable after sight, is not bound instantly to transmit the bill for acceptance, he may put it into circulation, and if he do not circulate it he may take a reasonable time to present it for acceptance, and a delay to present until the fourth day, a bill on London, given within twenty miles thereof, is not unreasonable.—Chit. on Bills, 161.

It has been said, that the question, what is a reasonable time? must depend on the particular circumstances of the case.—Chit. on Bills, 162.

Presentment should in all cases be made during the usual hours of business.—1 Swift's Dig. 428; Chit. on Bills, 163.

The presentment should be to the drawee himself, or to his authorised agent, for otherwise the drawer or endorsers will not be chargeable.—Chit. on Bills, 163.

If the drawee of a bill cannot be found at the place where the bill states him to reside, and it appear that he never lived there, or has absconded, the bill is to be considered as dishonored; but if he have only removed, it is incumbent on the holder to endeavor to find out to what place he has removed, and to make the presentment there; and he should in all cases make every possible inquiry after the drawee, and if it be in his power, present the bill to him; though it will be unnecessary to attempt to make such a presentment, if the drawee has left the kingdom, in which case it will be sufficient to present
the bill at his house, unless he have a known agent, when it should be presented to him.—Chit. on Bills, 164; 1 Swift's Dig. 428.

Acceptance, &c.

Acceptance may be defined to be the act by which the drawee evinces his consent and intention to comply with, and to be bound by, the request contained in a bill of exchange directed to him, or in other words, it is an engagement to pay the bill when due.—Chit. on Bills, 166.

When the holder of a foreign or inland bill presents it for acceptance, he is entitled to insist on such an acceptance by the drawee as will subject him, at all events, to the payment of the bill, according to the tenor of it.—Chit. on Bills, 166; 1 Swift's Dig. 423.

There cannot be a series of acceptors of the same bill, it must be accepted by the drawee, or, failing him, by some one for the honor of the drawer, &c.—Chit. on Bills, 167.

A bill on presentment for acceptance, must be accepted by the drawee within twenty-four hours, or in default thereof, it is liable to be, and indeed should be, treated as dishonored.—Chit. on Bills, 167.

An acceptance being an absolute undertaking to pay, may be made even after the time appointed by the bill for payment and even after a prior refusal to accept, so as to bind the acceptor, though it would discharge the drawer and endorsers, unless due notice of the prior non-acceptance, or of non-payment, at the time the bill became due, were given; and in such case the acceptor would be liable to pay the bill on demand, though in pleading, his liability might be stated to have been to pay according to the tenor and effect of the bill.—Chit. on Bills, 169.

It has been observed, that the drawee, although he have effects of the drawer's ought not to accept bills after he is aware of the failure of the drawer, because after that event, one creditor of the drawer ought not be paid in preference to another.—Chit. on Bills, 169.

The holder may in all cases insist on an absolute acceptance in writing, on the face of the bill, according to the terms of the bill, and in default thereof, may consider the bill as dishonored.—Chit. on Bills, 170; 1 Swift's Dig. 424.

It was established that a valid acceptance may be in writing on the bill itself, or on another paper, as by a letter undertaking to accept bills already drawn; or that it may be verbal.—Chit. on Bills, 170; 1 Swift's Dig. 423; 2 Blac. Com. 469; 1 Sel. N. P. 344.

It is necessary to observe, that an inland bill cannot be protested for non-payment, unless it has been accepted in writing.—Chit. on Bills, 173.

5. Provided always, That from and after the said first day of May, no acceptance of any such inland bill of exchange, shall be sufficient to charge any person whatsoever, unless the same be underwritten or endorsed in writing thereupon; and if such bill be not accepted by such underwriting or endorsement in writing, no drawer of any such inland bill shall be liable to pay any costs, damages, or interest thereupon, unless such protest be made for non-acceptance thereof, and within fourteen days after such protest, the same be sent, or otherwise notice thereof be given to the party from whom such bill was received, or left in writing at the place of his or her usual abode, and if such bill be accepted and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compellable to pay any costs, damages, or interest thereupon, unless a pro-
test be made and sent, or notice thereof be given, in manner and form above mentioned: Nevertheless, every drawer of such bill shall be liable to make payment of costs, damages, and interest upon such inland bill, if any one protest be made of non-acceptance, or non-payment thereof, and notice thereof be sent, given, or left as aforesaid.—Sch. Dig. 324.

An acceptance, in regard to extent or effect, may be either absolute, conditional, or partial, or varying from the tenor of the bill.—Chit. on Bills, 171; 1 Sel. N. P. 350.

A verbal or written promise to accept, at a future period, a bill already drawn, or that a bill then drawn, shall meet due honor, or shall be accepted, or certainly paid when due, amounts to an absolute acceptance.—Chit. on Bills, 176; 1 Sel. N. P. 348.

To constitute an acceptance, there must be some circumstance from whence it may be inferred that the drawee imagined he had induced the holder to consider the bill as accepted, and the whole of the circumstances must be taken together, and there must be evidence of a contract to charge a party as acceptor.—Chit. on Bills, 177.

With respect to the mode of annexing the condition, it is observed, that if a man intend to make a conditional acceptance, and accept in writing, he should be careful to express in such written acceptance the condition he may think proper to annex.—Chit. on Bills, 181; 1 Swift's Dig. 424.

If, however, the terms of the acceptance be ambiguous, parol evidence may be resorted to in order to explain them.—Chit. on Bills, 181.

A complete acceptance communicated to the holder is not revocable.—Chit. on Bills, 185.

The liability of the acceptor cannot in general be released or discharged, otherwise than by payment or by express release or waiver.—Chit. on Bills, 188.

What amounts to a waiver, and discharge of the acceptor's liability, must depend on the circumstances of each particular case.—Chit. on Bills, 191.

We have seen that the alteration of a bill, or of the acceptance, without the concurrence of the acceptor, and even in some cases with his assent, will discharge him from liability.—Chit. on Bills, 192.

When the drawee accepts a bill in the most usual and formal manner, he writes on the bill the word "accepted," and subscribes his name, or he writes the word "accepted" only, or he subscribes his name only.—1 Sel. N. P. 344.

On such presentment, the drawee either complies with the drawer's request by accepting the bill, or refuses to do so: in which latter case, it is incumbent on the holder to give notice to the various other persons who became parties to the bill antecedently to himself.—Chit. on Bills, 158; 1 Sel. N. P. 352.

And it is not sufficient for the holder to wait till the time mentioned in the bill for the payment has elapsed, and then to give notice of non-acceptance as well as non-payment.—Chit. on Bills, 196.

If the drawee, on presentment for acceptance, dishonor the bill, either wholly or partially, the holder may insist on immediate payment by the parties liable to him, as well from the drawer, as from the prior endorsers; or in default thereof, may instantly commence actions against each of them; and though the instrument may be somewhat like a note, yet if it also resembles a bill, and acceptance be refused, an action is immediately sustainable.—Chit. on Bills, 230.

If the bill be an endorsed bill, and the endorsee cannot get the drawee to
discharge it, he may call upon either the drawer or endorser, or if the bill has been negotiated through many hands, upon any of the endorsers; for each endorser is a warrantor for the payment of the bill, which is frequently taken in payment as much (or more) upon the credit of the endorser, as of the drawer. And if such endorser, so called upon, has the names of one or more endorsers prior to his own, to each of whom he is properly an endorser, he is also at liberty to call upon any of them to make him satisfaction; and so upwards. But the first endorser has nobody to resort to, but the drawer only.

What has been said of bills of exchange is applicable also to promissory notes, that are endorsed over, and negotiated from one hand to another; only that, in this case, as there is no drawer, there can be no protest for non-acceptance; or rather, the law considers a promissory note in the light of a bill drawn by a man upon himself, and accepted at the time of drawing, and, in case of non-payment by the drawer, the several endorsers of a promissory note have the same remedy, as upon bills of exchange, against the prior endorsers.


But, in case such bill be accepted by the drawer, and after acceptance he fails or refuses to pay it within three days after it becomes due, (which three days are called days of grace,) the payee or endorsee is then to get it protested for non-payment, in the same manner, and by the same persons who are to protest it in case of non-acceptance, and such protest must also be notified, within fourteen days after, to the drawer. And he, on producing such protest, either of non-acceptance, or non-payment, is bound to make good to the payee, or endorsee, not only the amount of the said bills, (which he is bound to do within a reasonable time after non-payment, without any protest, by the rules of the common law,) but also interest and all charges, to be computed from the time of making such protest. But if no protest be made or notified to the drawer, and any damage accrues by such neglect, it shall fall on the holder of the bill. The bill, when refused, must be demanded of the drawer as soon as conveniently may be: for though when one draws a bill of exchange, he subjects himself to the payment, if the person on whom it is drawn refuses either to accept or pay, yet that is with this limitation, that if the bill be not paid, when due, the person to whom it is payable, shall in convenient time give the drawer notice thereof; for otherwise the law will imply it paid.—2 Blac. Com. 469.

Noting and Protest.

If, therefore, the drawee refuses to accept, the holder or some other person, if he be ill or absent, should cause it to be protested, for which purpose he should carry the bill to a notary, who is to present it again to the drawee and demand acceptance, which should in case the bill was drawn on or accepted payable at a banker’s, be, during the usual hours of business, and in London not later than five o’clock, and if the drawee again refuse to accept, the notary is thereupon to make a minute on the bill itself, consisting of his initials, the month, the day and year, and the reason, if assigned, for non-acceptance, together with his charge.—Chit. on Bills, 216; 1 Swift’s Dig. 425.

A protest for non-payment of a foreign bill, or at least the minute of it, must be made on the day of refusal.—Chit. on Bills, 313.

The minute above mentioned is usually termed noting the bill, but this, it has been said, is unknown in the law; as distinguished from the protest, and is merely a preliminary step to the protest, and though it has grown into practice within these few years, it will not in any case supply the want of a protest.—Chit on Bills, 216.
The next step which the notary is to adopt is to draw up the protest, which is a formal declaration on the bill itself, if it can be obtained, or otherwise on a copy, that it has been presented for acceptance, which was refused, and why, and that the holder intends to recover all damages, expenses, &c., which he, or his principal, or any other party to the bill, may sustain on account of non-acceptance.

Or if no such notary be resident in the place, then by any other substantial inhabitant in the presence of two credible witnesses.—2 Blac. Com. 469; 1 Swift's Dig. 425; Chit. on Bills, 216; Sch. Dig. 309.

If a conditional or partial acceptance be offered, the protest should not be general, as otherwise it will release the acceptor from the effects of such acceptance.—Chit. on Bills, 216.

It has been even held, that the protest for non-acceptance or non-payment of an inland bill may be drawn up at any time before the trial, provided the bill be noted in due time.—Chit. on Bills, 216.

Form of Protest.

STATE OF GEORGIA, }

Houston County. } Know all men, that I, Richard Roe, a notary public, in and for said county, on the first day of May, in the year of our Lord, one thousand eight hundred and forty-six, at Perry, in said county, the usual place of abode of John Doe, (maker or endorser, as the case may be,) have demanded payment of the bill, (or acceptance, as the case may be,) of which the above is a copy; which the said John Doe did not pay, (or accept, as the case may be,) wherefore I, the said Richard Roe, do hereby protest the said bill.

Witness my hand and seal.

[L. S.]

RICHARD ROE, not'y pub.

Note.—If the protest be made by "any other substantial inhabitant," let the execution be performed thus:

Done in presence of

James M. Tait.

John Winter.

Peter Strong, Freeholder.

2. Which protest so made as aforesaid, shall within fourteen days after making thereof be sent, or otherwise due notice shall be given thereof, to the party from whom the said bill or bills, were received, who is, upon producing such protest, to repay the said bill or bills, together with all interest and charges from the day such bill or bills were protested; for which protest shall be paid a sum not exceeding the sum of six pence; and in default or neglect of such protest made and sent, or due notice given within the days before limited, the person so failing or neglecting thereof, is and shall be liable to all costs, damages, and interest, which do and shall accrue thereby.—Sch. Dig. 309.

From and after the passage of this act, the certificates, protests, and other acts of notaries public, under the hand and seal of such notary, in relation to the non-acceptance of any bill of exchange, draft, or other order, made for the payment of money, or other thing, and also in relation to the non-payment of any bill of exchange, draft, order, bond or note, for the payment of money or other thing, shall be deemed and received by the several courts of law and equity in this State, as sufficient prima facie or presumptive evidence of the facts therein stated, without any other or further proof. Provided always, that nothing in this act, shall prevent either party, plaintiff or defendant, from having the benefit of the testimony of such notary, should they deem it necessary: and provided also, that the party relying on such notarial act, shall, at the first term, file in the court, either a copy or the original of such protest or other
acts. And provided further, that whenever a plaintiff, relying upon such notarial act, shall fail to file the same as is herein provided, the court may grant such further time as it shall deem to be reasonable, in which it must be filed in order to be operative as evidence.—Act of 1836; Prin. Dig. 215.

The protest for non-acceptance in the case of an inland bill is by no means necessary, and the want of it does not affect the holder’s right to the principal sum, as it would in the case of a foreign bill; and it is in practice seldom made; an inland bill is in general only noted for non-acceptance, which noting, as already observed, is of no avail; and if not paid when due, it is then noted, and sometimes, though not very often, protested for non-payment; and a protest for non-acceptance made in the country, must be proved by the notary who made it, and it will not, as in case of a protest made abroad, prove itself. —Chit. on Bills, 219.

There does not appear to be any express decision with respect to the time when a foreign bill must be protested for non-acceptance, but from analogy to the time when a protest must be made for non-payment, it should seem that in this country, it, or at least the noting, should be made within the usual hours of business, on the day when the acceptance is refused, and that the neglect to make it at the time will only be excused by inevitable accident, such as sudden illness of the holder, robbery, or other circumstances which have been before noticed.—Chit. on Bills, 223.

Neglect to give Notice.

If the holder of a bill neglect to present it for acceptance when necessary, or to give notice of non-acceptance to those persons entitled to object to the want of it, such conduct, we have seen, discharges them from their respective liabilities.—Chit. on Bills, 233.

It has been held, that even the bankruptcy, insolvency, or death of the acceptor of a bill, or maker of a note, however notorious, will not excuse the neglect to make due presentment; and in the last case, it should be made to his personal representative, and in case there be no executor or administrator, then at the house of the deceased, or the drawer or endorsers will be discharged. —Chit. on Bills, 246.

So the consequences of the neglect to present may be waived by a payment of part, or a promise to pay after full notice of the default, and indeed by the same circumstances, which will do away the effect of a neglect to present for acceptance, or to give notice of the refusal.—Chit. on Bills, 248.

The neglect to make a proper presentment may, as far as respects the drawer’s liability, be excused by the drawee’s not having had effects of the drawers in his hands from the time of drawing the bill to the time when it became due. —Chit on Bills, 247.

Refusal to Accept.

4. That from and after the first day of May, which shall be in the year of our Lord one thousand seven hundred and five, in case, upon presenting of any such bill or bills of exchange, the party or parties, on whom the same shall be drawn, shall refuse to accept the same, by underwriting the same as aforesaid, the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may, and shall cause the said bill or bills to be protested for non-acceptance, as in case of foreign bills of exchange, anything in the said act or any other law to the contrary notwithstanding: for which protest there shall be paid two shillings, and no more.
5. That from and after the first day of May, no acceptance of any such inland bill of exchange shall be sufficient to charge any person whatsoever, unless the same be underwritten or endorsed in writing thereupon: and if such bill be not accepted by such underwriting, or endorsement in writing, no drawer of any such inland bill shall be liable to pay any costs, damages, or interest thereupon, unless such protest be made for non-acceptance thereof, and within fourteen days after such protest, the same be sent, or otherwise notice thereof be given to the party from whom such bill was received, or left in writing at the place of his or her usual abode; and if such bill be accepted, and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compellable to pay any costs, damages, or interest thereupon, unless a protest be made and sent, or notice thereof be given, in manner and form above mentioned: Nevertheless, every drawer of such bill shall be liable to make payment of costs, damages, and interest upon such inland bill, if any one protest be made of non-acceptance, or non-payment thereof, and notice thereof be sent, given or left as aforesaid.—Sch. Dig. 323.

Acceptance supra Protest.

The drawer, acceptor, endorser, and holder, are the principal and immediate parties to the instrument; but besides them, a person may become a party to it in a collateral way; as where the drawee refuses to accept, any third party, after protest for non-acceptance, may accept for the honor of the bill generally, or of the drawer, or of any particular endorser, in which case the acceptance is called an acceptance supra protest, and the person making it is styled the acceptor for the honor of the person on whose account he comes forward; and he acquires certain rights, and subjects himself to nearly the same obligations as if the bill had been directed to him.—A person may also become party to the instrument by paying it supra protest, either for the honor of the drawer or endorsers.—Chit. on Bills, 22, 166, 241, and 242.

Time of Presenting.

It would be extremely prejudicial to commerce, if the holder of a bill or note were suffered to give longer credit to the drawee than the instrument directs, and afterwards, in default of payment by the drawee, to resort to the drawer or endorsers, at a time when perhaps the accounts between them and the persons liable to them may have been adjusted, or those persons may have become insolvent, and the common law detests negligence and laches. On this principle, it is settled, that the holder of a bill must present it to the drawee for payment at the time when due, when a time of payment is specified; and when no time is expressed, within a reasonable period after receipt of the bill; and that if he neglects to do so, he shall not afterwards resort to the drawer or endorsers, whose implied contracts are only to pay in default of the drawee, and not immediately or absolutely, and who are always presumed to have sustained damage by the holders laches.—Chit. on Bills, 245.

If the holder of a bill at the time it becomes due, be dead, it is said that his executor, although he have not proved the will, must present it to the drawee. If the drawee goes abroad leaving an agent in England, with power to accept bills, who accepts one for him, the bill when due, must be presented to the agent for payment if the drawee continue absent. When a bill, transferable only by endorsement, is delivered to a person without being endorsed, he should, nevertheless, present the bill for payment to the acceptor, and offer an indem-
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ntity to him; and if the acceptor then refuse to pay, the bill should be protest-
ed for non-payment.—Chit. on Bills, 247.

We have next to consider in what cases the acceptor of a bill or maker of a
note, may resist an action on account of neglect of the holder to present the
instrument for payment. It is a general rule of law, that where there is a pre-
cedent debt or duty, the creditor need not allege or prove any demand of pay-
ment before the action brought, it being the duty of the debtor to find out his
creditor, and tender him the money, and as it is technically said, the bringing
of the action is a sufficient request.—Chit. on Bills, 249.

The custom of merchants is stated to be, that if the drawee of a bill of ex-
change absconds before the day when the bill is due, the holder may protest
it, in order to have better security for the payment, and should give notice to
the drawer and endorsers of the absconding of the drawee: and if the acceptor
of a foreign bill become bankrupt before it is due, it seems that the holder may
also in such case protest for better security; but the acceptor is not, on ac-
count of the bankruptcy of the drawer, compellable to give this security.—Chit.
on Bills, 240.

Notice.

When the drawee refuses to accept a bill, or accepts it conditionally, or par-
tially, the holder or the person interested in the bill, must give notice to all the
parties to the bill to whom he intends to resort for payment, that the bill has
been dishonored: and if the party entitled to notice should be absent, it will be
sufficient to leave notice at his usual place of abode. This notice must be
given in a reasonable time, and the holder must not delay it till payment is re-
 fused. Where the parties reside in the place where the bill was dishonored,
notice must be given on the same day, if practicable, if not, on the next day:
where they reside in a different place, then by that day’s mail, if practicable, if not,
by the next mail: if there is no communication by mail, then by the first ordi-
nary conveyance. Where the parties reside in the same place, personal notice
must be given, if in different places, then it will be sufficient to send the notice
by a letter in the mail: and proof of sending notice in such manner would be
sufficient, though the letter should miscarry: if in a foreign country, then by
the first direct and regular conveyance. If the residence is unknown, then the
best information must be obtained that can be, and notice sent accordingly.—
1 Swift’s Dig. 425; Chit. on Bills, 196.

Nothing will excuse the neglect to give notice, but the want of effects of the
drawer in the hands of the drawee, the absconding of the drawee, or the sud-
den illness or death of the holder, and the notice must be given as soon as the
impediment is removed. But such neglect may be waived by the party who
can take advantage of it by part payment, by a promise to pay the whole or see
it paid; or by an acknowledgment that it must be paid, when done with a full
knowledge of all the facts.—1 Swift’s Dig. 426.

When due notice is not given, the party is exonerated from any liability to
pay the bill; but if given, the holder may insist upon immediate payment from
the parties liable; and when the bill is payable in a certain time after date, or
sight, if dishonored he is not bound to wait till the bill becomes due, but may
sue immediately.—1 Swift’s Dig. 426.

From some cases to be found in the books, it appears to have been formerly
holden, that it was incumbent on the person insisting on the want of notice, to
prove that he had really sustained damage by the laches of the holder; but it
has been settled by later decisions, that such damage is to be presumed, and
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that the only excuse for the omission is the proof of the want of effects in the hands of the drawee; and it is always presumed, till the contrary appears, that the drawer of the bill has effects in the drawee’s hands, and that the endorser or assignor has given value for it, and consequently that each may have sustained a loss by the holder’s neglect to give notice, by which the chance of obtaining satisfaction from the parties liable to them, must necessarily be rendered more precarious.—Chit. on Bills, 198.

But if the drawer of a bill, from the time of making it to the time when it was due, had no effects in the hands of the drawee or acceptor, and had no right upon any other ground to expect that the bill would be paid, and the bill was drawn for the accommodation of such drawer, he is prima facie not entitled to notice of the dishonor of the bill; nor can he object, in such case, that a foreign bill should have been protested.—Chit. on Bills, 198.

But it is no excuse for not giving notice to the endorser of a bill, that the acceptor had no effects of the drawer.—Chit. on Bills, 200.

So a person, who, without consideration, but without fraud, endorsed a bill, the drawer and acceptor of which proved to be fictitious persons, is entitled to due notice of the dishonor, or he will be discharged.—Chit. on Bills, 200.

In general, if the bill or note be given as a collateral security, and the party delivering it were no party to it, he will not be discharged from his original liability by the laches of the holder.—Chit. on Bills, 204.

If at any time between the drawing of the bill and its presentment and dishonor, the drawee had some effects of the drawer in his hands, though insufficient to pay the amount, or though the drawer has afterwards withdrawn such effects, he will nevertheless be entitled to notice of the dishonor, and the laches of the holder will discharge him from liability.—Chit. on Bills, 206.

The death, bankruptcy, or known insolvency of the drawee, or his being in prison, constitute no excuses, either at law or in equity, for the neglect to give due notice of non-acceptance or non-payment.—Chit. on Bills, 209.

A party may by his agreement dispense with the necessity of notice of dishonor, and where the drawer and endorser of a bill of exchange enter into a bond, conditioned to pay the bill within one month after it became due, if not paid by the acceptor, they were held not entitled to notice of the dishonor.—Chit. on Bills, 211.

A neglect to give immediate notice may also be excused by some other circumstances. Thus, the abscending or absence of the drawer or endorser may excuse the neglect to advise him; and the sudden illness or death of the holder or his agent, or other accident, may constitute an excuse for the want of a regular notice to any of the parties, provided it be given as soon as possible after the impediment is removed. And the holder of a bill of exchange is excused for not giving regular notice of its being dishonored to an endorser, of whose place of residence he is ignorant, if he use reasonable diligence to discover where the endorser may be found.—Chit. on Bills, 213.

The loss or destruction of an accepted bill affords no excuse for the delay in giving notice of non-payment.—Chit. on Bills, 214.

The conduct which the holder must adopt on the dishonor of a foreign bill, differs materially from that which he must pursue in the case of an inland bill. Whenever notice of non-acceptance of a foreign bill is necessary, a protest must also be made, which, though mere matter of form, is, by the custom of merchants, indispensably necessary, and cannot be supplied by witnesses or oath of the party, or in any other way, and as it is said, is part of the constitution of a foreign bill of exchange; and the mere production of this protest
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attested by a notary public, without proof of the signature or affixing of the seal (though not so if payable here) will, in the case of a bill payable and protested out of this country, be evidence of the dishonor of the bill, and to it all foreign courts give credit; and it cannot be supplied by mere proof of noting for non-acceptance, and a subsequent protest for non-payment. But proof that the drawer had no effect in the hands of the drawee at the time of drawing the bill, or at any time afterwards, will in this country excuse the want of a protest, and prevent the drawer being discharged. So a subsequent promise by the drawer to pay the bill may preclude him from availing himself of the want of a protest. But it is not advisable to omit protesting a foreign bill, because in foreign courts they would probably not be governed by the exception introduced by our courts.—Chit. on Bills, 214.

At common law, no inland bill could be protested for non-acceptance; but by the statute 3 and 4 Anne, c. 9. s. 4. (Sch. Dig. 322,) which will be observed upon more fully hereafter, a protest was given in case of refusal to accept in writing any inland bill amounting to the sum of five pounds, expressed to be given for value received, and payable at days, weeks, or months after date; in the same manner as in case of foreign bills of exchange.—Chit. on Bills, 218.

Notice, however, must be given of the non-acceptance, otherwise, for the reasons before stated, the holder in general discharges the drawer and endorsers from all liability. There is no precise form of words necessary to be used in giving notice of the dishonor of a bill, any act of the holder, signifying the refusal of the drawee, will be a sufficient notice; though we have seen, that in the case of a foreign bill, there must also be a protest.—Chit. on Bills, 219.

1. From and after the passage of this act, that the practice heretofore required of making a demand of the makers of promissory notes and other instruments, for the payment and performance of the same, and their giving notice of such demand within a reasonable time to the endorsers of said promissory notes and other instruments, shall cease and become entirely unnecessary to bind said endorsers; and whenever any person whatever endorses a promissory note or other instrument, he shall be held, taken, and considered as security to the same, and be in all respects bound as security, until said promissory note or other instrument is paid off and discharged, and shall be liable to be sued in the same manner and in the same action with the principal or maker of said promissory notes or other instruments; any law, practice, or usage to the contrary notwithstanding; provided always, that nothing herein contained shall extend to any promissory notes which shall be given for the purpose of negotiation, or intended to be negotiated at any chartered bank, or which may be deposited in any chartered bank for collection: and provided, also, that nothing contained in this act shall be construed as to prevent the endorser from defining his liability in the endorsement.—Act of 1826; Prin. Dig. 462.

With respect to the mode of giving notice, personal service is not necessary, nor is it requisite to leave a written notice at the residence of the party; but it is sufficient to send to or convey verbal notice at the counting-house or place of abode of the party, without leaving notice in writing. And it is sufficient, both in the case of a foreign and an inland bill, to send notice by the post, even though the letter should miscarry.—Chit. on Bills, 220.

When there is no post, it is sufficient to send notice by the ordinary mode of conveyance, though notice by a special messenger might arrive earlier.—Chit. on Bills, 221.

It has been decided, that where it is necessary or more convenient for the holder to send notice by other conveyance than the post, he may send a special
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messenger, and he may recover the reasonable expenses incurred by that mode of giving notice.—Chit. on Bills, 222.

The letter containing the notice should be directed to the place where it will most likely reach the party.—Chit. on Bills, 222.

The notice of non-acceptance, when necessary, must be given to all the parties to whom the holder of the bill means to resort for payment, and though proof that the drawer had no effects in the hands of the acceptor, will be an excuse for want of notice with respect to him, it will not have that operation with respect to any of the endorsers; for they have nothing to do with any of the accounts between the drawer and the drawee.—Chit. on Bills, 229.

If the party entitled to notice be a bankrupt, notice should be given to him before the choice of assignees, and after such choice, to them. If the party be dead, notice should be given to his executor or administrator; and it is expedient, though not in general absolutely necessary, to give notice to the person who had guaranteed the payment of the bill.—Chit. on Bills, 229.

With respect to inland bills protested for non-acceptance the 3 and 4 Anne, c. 9 (Sch. Dig. 320.) directs the protest or notice thereof to be given to the person from whom the bill was received.—Chit. on Bills, 230.

When due notice of the non-acceptance has been given to the drawer and endorsers, it is not necessary afterwards to present the bill for payment, or if such presentment be made, to give notice of the dishonor.—Chit. on Bills, 232.

A person who has been once discharged by laches from his liability is always discharged.—Chit. on Bills, 240.

If when a bill or note becomes due, the holder renews the same, or for valuable consideration agrees with the drawee of the bill, or maker, of the note, to give him time for payment, without the concurrence of the other parties entitled to sue such drawee or maker on the bill or note, they will thereby in general be discharged from all liability, although the holder may have given due notice of the non-payment. There is no obligation of active diligence on the holder to sue the acceptor or any other party, and he may forbear to sue as long as he chooses; but he must not so agree to give time to the acceptor so as to preclude himself from suing him, and suspend his remedy against him in prejudice of the drawer and endorsers.—Chit. on Bills, 290.

Payment.

But the mere change or addition of securities, without expressly relinquishing the original debts, nor suspending for a time the creditor’s right of action, will not, either at law or equity, discharge a surety or party to a bill, and accepting a mere collateral security from the acceptor, will not discharge the other parties to a bill; and where a bill of exchange having been dishonored, the acceptor transmitted a new bill for a larger amount to the payee, but had not any communication with him respecting the first, and the payee discounted the second bill with the holder of the first, which he received back as part of the amount, and afterwards for a valuable consideration endorsed it to the plaintiff; it was held that the second bill was merely a collateral security, and that the receipt of it by the payee did not amount to giving time to the acceptor of the first bill, so as to exonerate the drawer.—Chit. on Bills, 294.

If there be any evidence of the assent of the drawer or endorser to the security being taken from and time given to the acceptor, or if, after notice of the
time having been given, the drawer or endorser promises to pay, he is precluded from taking advantage of the indulgence to the acceptor.—*Chit. on Bills*, 296.

The giving time or taking security from one of several acceptors of a bill or makers of a note, will not discharge the other acceptors or makers from liability; but the releasing such one would discharge the rest, unless indeed the instrument of release contain merely a covenant not to sue that one, and this legal operation of a release to one of several acceptors, &c. may be restrained in some cases by the express terms of the instrument.—*Chit. on Bills*, 296.

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**Days of Grace.**

The *days of grace* which are allowed to the drawee, are so called, because they were formerly merely gratuitous, and not to be claimed as a right by the person on whom it was incumbent to pay the bill, and were dependent on the inclination of the holder; they still retain the name of grace, though the custom of merchants recognized by law, has long reduced them to a certainty, and established a right in the acceptor to claim them, in all cases of bills or notes payable at usance, or after date, after sight, or after a certain event, or on a particular day. The number of these days varies according to the custom of the different countries.—*Chit. on Bills*, 264.

When a bill, &c. is made payable at *usance*, or at a certain time *after date* or sight, or *after demand*, it is not payable at the precise time mentioned in the bill, *days of grace* being allowed, but in the case of bills, &c. payable on *demand*, no such days are allowed.—*Chit. on Bills*, 263.

Promissory notes, and bills payable at banks, and all negotiable notes, are entitled to three days' grace.—1 *Swift's Dig.* 433.

A bill or note is not now considered due or demandable till the last day of the three days of grace; as if a bill or note is dated on the 12th of any month, and made payable ten days, one week, or one month after date, payment must be demanded on the 25th, the 22d of the same, and on the 15th of the next month, respectively. But if the third day of grace falls on a Sunday, the bill or note is payable, and due on the Saturday preceding. Days of grace are allowed upon promissory notes, in like manner as upon bills of exchange.—2 *Blac. Com.* 469 *n*.

The days of grace which are allowed on a bill of exchange, must always be computed according to the law of the place where it is due.—*Chit. on Bills*, 266.

A promissory note made payable to A without adding, or to *his order*; or to *bearer*, though not negotiable, is a note within the statute, and the three days of grace must be allowed upon it.—2 *Blac. Com.* 470 *n*.

When a bill purports to be payable so many days *after sight*, the days are computed from the time the bill was accepted, exclusively thereof, and not from the date of the bill, or the day the same came to hand, or was presented for acceptance, for the *sight* must appear in a legal way, which is either by the parties accepting the bill, or by protest for non-acceptance.—*Chit. on Bills*, 268.

When a check, or bill, or banker's note, is expressed to be payable on *demand*, or where *no time of payment is expressed*, it is payable instantly on presentment, without any allowance of days of grace, and the presentment for payment of such a check, or bill, must be made *within a reasonable time* after the receipt of it.—*Chit. on Bills*, 269.
**Usance.**

The term *usance* is French, and signifies the time which it is the *usage of the countries between which bills are drawn, to appoint for payment of them. The length of usance, or time which it includes, varies in different countries, from fourteen days, to one, two, or even three months after the date of the bill. Double or treble usance, is double or treble the usual time, and half usance is half that time; when it is necessary to divide a month upon an half usance, the division, notwithstanding the difference in the length of the month, contains fifteen days.—*Chit. on Bills* 266.

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**CHAPTER VI.**

**DEBT—ASSUMPSIT—JUDGMENT, ETC.**

The action of *Assumpsit* is by far the most usual remedy on bills, checks and notes; and indeed it appears to be the only remedy where no privity of contract exists between the parties, as between the endorse and the acceptor of a bill, and a remote endorse and maker of a note, in which case debt is not maintainable, or when the action is against an executor or administrator, against whom debt on simple contract is not in general sustainable.—*Chit. on Bills*, 342.

Pleadings are the mutual altercations between the plaintiff and defendant; which at present are set down and delivered into the proper office in writing, though formerly they were usually put in by their counsel *a tenus*, or *via voce*, in court and then minuted down by the chief clerks, or prothônotaries; whence in our old law French, the pleadings are frequently denominated the *parol*.

The first of these is the *declaration*, narratio, or count, anciently called the tale; in which the plaintiff sets forth his cause of complaint at length: being indeed only an amplification or exposition of the original writ upon which his action is founded, with the additional circumstances of time and place, when and where the injury was committed.—*3 Blac. Com.* 293.

The declaration should set out, expressly, that the contract was by deed or instrument under seal, and it will not be sufficient to say it was in writing. The plaintiff should make a proof of the deed on which the action is founded, in all cases where the deed is in his power: but he is excused when it is in the hands of the opposite party, or has been lost or destroyed by time or accident, he must however, state in his declaration, the facts on which he relies to excuse him for not producing it on oyer.—*1 Swift’s Dig.* 662.

8. All suits of a civil nature cognizable in the said courts respectively, shall be by petition to the court, which petition shall contain the plaintiff’s charge, allegation, or demand, plainly, fully and distinctly set forth, and be signed by the plaintiff, or his, her, or their attorney, and to which petition the clerk shall annex a process, signed by such clerk, and bear test in the name of one of the judges or justices of such court, directed to the sheriff, requiring the defendant, or defendants, to appear at the court to which the same shall be made.
DEBT—ASSUMPSIT—JUDGMENT, ETC.

returnable, and shall be served on the defendant or defendants, at least twenty days before the return thereof, by delivering a copy of such petition and process to the defendant or defendants, or leaving such copy at his, her, or their most notorious place or places of residence.—Act of 1799; Prin. Dig. 420.

That from and immediately after the passing of this act it shall not be necessary, as heretofore, for the sheriffs of this State to serve all writs and processes at common law, twenty days before the sitting of the court, to which the same may be made returnable, but the same may be served and returned seventeen days before the sitting of the court; Provided, nevertheless, that all writs and processes shall be copied and issued, as heretofore, twenty days before the sitting of the court, to which the same may be made returnable; any law, usage, or custom, to the contrary notwithstanding.—Act of 1829; Prin. Dig. 465.

1. That in every case where there is a good and legal cause of action, plainly and distinctly set forth in the petition, and there is in substance a copy served on the defendant or defendants, or left at their most notorious place of abode, every other objection shall be on motion amended without delay or additional costs.—Act of 1818; Prin. Dig. 442.

Writ in Debt.

STATE OF GEORGIA, } To the honorable Superior Court of said
Houston County. } County.

The petition of John Doe, respectfully showeth, that Richard Roe, of said County, (a) owes to, and from your Petitioner unjustly detains, the sum of five hundred dollars, besides interest; for that whereas, heretofore, to wit, on the first day of May, in the year of our Lord, eighteen hundred and forty-six, said Richard Roe, made his certain instrument in writing, commonly called a Promissory Note, the date whereof, is the day and year aforesaid, his own proper hand-writing being thereto subscribed, (b) and then and there delivered, (c) the said Note to your Petitioner, (which is now here shown to the Court:) whereby, one day after the date of said Note, said Richard Roe, promised to pay your Petitioner, or bearer, the sum of money aforesaid, to wit, five hundred dollars, for value received: yet, the said Richard Roe, although so indebted, and to pay the said sum of money often requested, has not paid the same, but the same to pay hath wholly refused, and still does refuse, to the damage of your Petitioner one thousand dollars: wherefore, your Petitioner brings suit, and prays process may issue, requiring said Richard Roe, personally, or by Attorney, to be and appear, at the next Superior Court, to be held in and for said County, to answer your petitioner in an action of Debt, &c.

SIMON WAKE, Pl't's Att'y.

Writ in Assumpsit.

STATE OF GEORGIA, } To the honorable Superior Court, of said
Houston County. } County.

The petition of John Doe, respectfully showeth, that Richard Roe, of said County, (a) is indebted to your Petitioner, the sum of five hundred dollars, besides interest: for that whereas, the said Richard
Roe, on the first day of May, in the year of our Lord, eighteen hundred and forty-six, made his certain instrument in writing, commonly called a Promissory Note, his own proper hand-writing being thereon subscribed, (b) and then and there delivered, (c) said Promissory Note to one Charles Smith, (which Note is now here in Court to be shown:) whereby, one day after the date of said Note, the said Richard Roe promised to pay said Charles Smith, or bearer, the sum of five hundred dollars, for value received. And the said Charles Smith, to whom said Note was made payable, afterwards, to wit, on the day and year first aforesaid, duly endorsed and delivered said Note to your Petitioner. By reason whereof, and by force of the statute, in such case made and provided, (d) the said Richard Roe, became liable to pay your Petitioner, the aforesaid some of money, according to the tenor and effect of said Note; and being so liable, in consideration thereof, afterwards, to wit, on the day and year first aforesaid, said Richard Roe, undertook and faithfully promised (e) to pay your Petitioner the same, according to the tenor and effect of said Note: yet, the said Richard Roe, although so indebted, and to pay the said sum of money often requested, has not paid the same, but the same to pay has wholly refused, and still does refuse, to the damage of your Petitioner one thousand dollars: wherefore, your Petitioner brings suit and prays process may issue, requiring the said Richard Roe, personally, or by Attorney, to be and appear at the next Superior Court, to be held in and for said County, to answer your Petitioner in an action of Assumpsit, &c.

SIMON WAKE, Plff's Att'y.

Note a.—All civil cases, except in cases respecting the titles to land, shall be tried in the County wherein the defendant resides.—Prin. Dig. 910.

Note b.—This statement is unnecessary.—Chit. on Bills, 489.

Note c.—The averment of delivery is not strictly necessary, as the term “made” is held, in law, to include a delivery.—Chit. on Bills, 489.

Note d.—This is usually stated, but it seems unnecessary.—Chit. on Bills, 489.

Stating a liability to accrue “by force of the statute in such case made and provided,” although very generally pursued in the practice, is not essential, as the Court will take notice of the effects of a public law, without its being referred to in the declaration. —Gould's Plead. c. 1, s. 5, 20.

Note e.—The action being founded on a legal liability, no promise need be stated, but it is usually inserted.—Chit. on Bills, 489.

Note.—For the form of the Declaration in the case of checks, see Chit. on Bills, 497. —On Inland Bills, 499.—On Foreign Bills, 507.

That from and after the passage of this act, the filing of the writ in office, shall be regarded and considered the commencement of action: Provided, it shall be the duty of the clerk to enter on the declaration the time when said declaration is filed in office; to which entry said clerk shall sign his name.—Act of 1843; pamp. p. 126.

Filed in office, this May 1, 1846.

JAMES HOLDFAST, Cl'r.

The next step for carrying on the suit, after suing out the original, is called the process; being the means of compelling the defendant to appear in court. —3 Blac. Com. 279; 1 Swift's Dig. 589.

1. That all original process hereafter issued by the clerks of the superior and inferior courts respectively, where the sheriff who ought to execute the
same, shall be anywise interested, shall be directed to the coroner of the county in which said sheriff may reside, and to the sheriffs of the adjoining counties, and shall be served and returned by the said coroner, or the sheriff of any one of such adjoining counties, at the option of the plaintiff, within such time, and in such manner as required by law in other cases.—Act of 1840; pamp. p. 113.

Process.

STATE OF GEORGIA—HOUSTON COUNTY.

To the Sheriff of said county: greeting.

JOHN DOE

RICHARD ROE.

Assumpsit, in the Superior Court.

The defendant Richard Roe, is hereby notified and required personally, or by attorney, to be and appear at the next Superior court, to be held in and for said county, on the fourth Monday in October next, then and there to answer the plaintiff's demand; in an action of Assumpsit, as in default thereof the court will proceed, as to justice shall appertain.

Witness, the honorable Hugh Burns, one of the judges of the Superior Courts, this May 1, 1846.

JAMES HOLDFAST, cl'k.

2. That when any process, or writ, shall bear test in the name of any judge of the superior courts of this State, who shall have died before the issuing of the same, said writ or process shall not abate therefor, but the same shall at any time be amended, on motion, without delay, or costs.—Act of 1838; pamp. p. 168.

Service by the Sheriff.

I have served this writ on the defendant, by leaving a copy thereof, at the most notorious place of residence of said defendant; this May 1, 1846.

WILLIAM HARRISTON, sh'lff.

1. That whenever a defendant or defendants, to any suits in law or equity in this State, acknowledges service and waives process, it shall not be necessary for the clerk to attach a process.

2. That no clerk or sheriff of the superior or inferior court shall be allowed fees for any services but such as he actually performs.—Act of 1840; pamp. p. 113.

Acknowledgment of Service.

1. Richard Roe, defendant in the within writ, hereby acknowledge due and legal service of the same, and waive the necessity of copy and process; this May 1, 1846.

RICHARD ROE, Def't.

8. And all process issued and returned in any other manner than that herebefore directed, shall be and the same is hereby declared to be null and void.

—Act of 1799; Prin. Dig. 421.

8. And if any such process shall be delivered to the sheriff or other officer,
whose duty it shall be to execute the same, so late that it cannot be served in manner aforesaid, twenty days before the sitting of the court to which it shall be returnable, such process shall not be executed, but the officer shall return the same, with the truth of the case. And if any original civil process shall be taken out within twenty days of the next court, the same shall be made returnable to the next court to be held after the expiration of the said twenty days, and not otherwise. And all process issued and returned in any other manner than that hereinbefore directed, shall be and the same is hereby declared to be null and void.—Act of 1799; Prin. Dig. 420.

9. All process issued by the clerks of the said courts respectively, where the sheriff who ought to execute the same, shall be any wise interested, shall be directed to the coroner of such county, and served and returned by him in the same manner as is required of sheriffs.—Act of 1799; Prin. Dig. 421.

1. That it shall and may be lawful for plaintiffs or complainants, within one month after the institution of any suit or suits at law or equity, against any incorporation, joint stock or manufacturing company, to publish once a week for four successive weeks in some public gazette of this State, notice of the commencement of said suit or suits, and said publication shall operate as notice to each stockholder in said incorporation, joint stock or manufacturing company, for the purposes hereinafter mentioned.

Notice.

The Stockholders of the Pigeon Roost Manufacturing Company, are hereby notified and informed, that I have instituted an action of Assumpsit, against the President and Directors of said Company, in the Superior court of the county of Houston, returnable to the April term of said court, eighteen hundred and forty-six; this May 1, 1846.

John Doe.

2. That when notice has been given as aforesaid, and a judgment or decree has been obtained against any incorporation, joint stock or manufacturing company, where the individual or private property of the stockholders is bound for the payment of the whole or any part of the debts of said company; execution shall first issue against the goods and chattels, lands and tenements of said company; and upon the return thereof by the proper officer, with the entry "no corporate property to be found" endorsed thereon, that then and in that case it shall be the duty of the clerk or other officer, upon application of the plaintiff, his agent or attorney, accompanied with a certificate, as hereinafter directed to be obtained, forthwith to issue an execution against each of the said stockholders (if required) for their rateable part of the said debt and costs of suit, in proportion to their respective shares or other liabilities under their charter of incorporation.

3. That it shall be the duty of the president or presiding officer, by whatever name he may be designated, upon application of the plaintiff, his agent or attorney, forthwith to give a certificate under oath of the names of the stockholders in said company and the number of shares owned by each at the time of the rendition of judgment against said company.

4. That if upon application by the plaintiff, his agent or attorney, the president or presiding officer as aforesaid, he shall refuse to give a certificate as aforesaid, or shall abscond or conceal himself to avoid giving the same, and oath being made by the plaintiff, his agent or attorney of said refusal, the clerk or other officer is hereby required to issue execution against said president or presiding officer as aforesaid, for the amount of principal, interest and costs of said suit.
5. That if the president, directors or other officers of said company, shall fail or refuse to defend said suit or suits, brought as aforesaid, any one or more of the stockholders of said company shall be permitted by the court, before which said suit or suits is pending, to plead to and defend the same, in as full and ample a manner as said company in its corporate character could plead to and defend the same.

6. That the defendant or defendants in execution, under the provisions of this act shall be entitled to an illegality, under the same rules, regulations and restrictions as defendants are in other cases under the existing laws of this State.

7. That this statute shall be understood and construed as cumulative of the common law; and that all laws and parts of laws militating against the same, and this construction thereof, be, and the same are hereby repealed.—Act of 1841; pamph. p. 130.

That from and after the passage of this act, service of all bills, subpoenas, writs, attachments, and other original process necessary to the commencement of any suit against any corporation, in any court of law or equity in this State, may be executed by leaving the same at the place of transacting the usual and ordinary public business of said corporation, if any such place of business there shall be within the jurisdiction of the court in which said suit may or shall be commenced; and if any corporation shall not have any such place for the transaction of its usual and ordinary public business, then by leaving the same at its last notorious place of transacting its said business, and publishing a copy of said subpoena, attachment, or other original process, in one of the public gazettes of this State for the space of three months; and any copy of the newspaper containing said publication shall be received in all the courts of this state as sufficient evidence of such service.—Act of 1845; pamph. p. 40.

11. In all cases where a suit shall be instituted in any of the said courts on any bond, note, or other written obligation subscribed by several persons, who reside in different counties, the plaintiff shall have his option to institute his suit in either of the said counties, and the clerk shall issue the original petition and process, and a copy or copies in such county, against the defendant or defendants who may reside therein, in manner directed by this act; and shall also issue another original, and copy or copies thereof for the defendant or defendants, resident in other county or counties; and it shall be the duty of the plaintiff, his agent, or attorney, to cause such original and copies to be delivered to the sheriff or other officer in such other county or counties, who shall execute and return the same to the court from whence they issued, in such manner as is hereinbefore directed, and on such return the plaintiff may proceed as in other cases.—Act of 1799; Prin. Dig. 421.

9. And for the more orderly and regular proceeding in the said courts, the following rules and methods shall be observed, to wit: The defendant or defendants shall appear at the court to which the petition and process shall be returnable, and on or before the last day of the said court shall make his, her, or their defence or answer in writing, which shall plainly, fully and distinctly set forth the cause of his defence, and be signed by the party making the same, or his, her, or their attorney; which said answer may contain as many several matters as such defendant or defendants may think necessary for his, her, or their defence.—Act of 1799; Prin. Dig. 421; 7th com. law rule.

9. And no petition, answer, return process, judgment, or other proceeding in any civil cause, shall be abated, arrested, quashed, or reversed, for any defect in matter of form, or for any clerical mistake or omission, not affecting the real merits of the cause; but the court, on motion, shall cause the same to be
amended without any additional cost at the first term, and shall proceed to
give judgment according to the right of the cause and matter of law, as it
shall appear to the said court, without regard to such imperfections, in mat-
ter of form, clerical mistake or omission.—Act of 1799; Prin. Dig. 411.

3. No part of an answer shall be stricken out or rejected on account of
being contradictory to another part of the same answer, but the court shall be
bound to suffer the whole answer to remain, if the defendant should desire it,
and avail himself of any advantage he can or may have under either or the
whole of the said answer, and proceed to trial accordingly.—Act of 1818;
Prin. Dig. 443.

10. Where any defendant shall fail to appear and answer in manner afore-
said, the court, on motion of the plaintiff or his counsel, shall enter a judg-
ment by default, and the plaintiff’s claim, allegation or demand, shall be tried
in all cases of judgment by default, by a jury; but no such trial shall in any
case be had at the first term; and no cause whatsoever depending in the said
courts shall be continued more than one term, at the instance of the same par-
ty.—Act of 1799; Prin. Dig. 421.

9. And no dilatory answer shall be received or admitted, unless affidavit
be made of the truth thereof.—Act of 1799; Prin. Dig. 421.

Plea of non est factum.

STATE OF GEORGIA—HOUSTON COUNTY.

JOHN DOE } Assumpsit, in Houston Superior Court, Oct. term, 1846.

RICHARD ROE.

And the said Richard Roe, by his attorney, Joshua Howard, comes
and defends the wrong and injury, when, &c., and says, that he did
not make the said Note in said suit described, nor authorise any other
person to make said Note, and of this he puts himself upon the
country, &c.

Joshua Howard, Def’t’s Att’y.

In person appeared before me, James Mack, a justice of the peace,
in and for said county, Richard Roe, who being sworn, deposeth and
saith, that the facts contained in the foregoing plea, are just and true,
as therein stated.

Sworn to and subscribed, before me, this Oct. 1, 1846.

James Mack, J. P.

RICHARD ROE.

Plea to the Jurisdiction.

And the said Richard Roe, in his own proper person, comes and
says, that this Court ought not to have, or take, further cognizance of
the action aforesaid, because he says that at the time of the commence-
ment of said suit, this defendant resided in the County of Macon, in
said State, and not in the County of Houston, or elsewhere out of said
County of Macon.

Richard Roe. defendant in the above stated case, in person appears
before me James Mack, a Justice of the Peace, in and for said County,
and makes oath and says, that the above plea is true in substance and
fact.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

RICHARD ROE.
Plea of Misnomer.

And William Roe, against whom the said John Doe hath exhibited his writ, by the name of Richard Roe, in his own proper person, comes and says, that he is named and called by the name of William Roe, and by that name and surname hath always, since the time of his nativity hitherto, been named and called; without this, that he, the said William Roe, now is, or at the time of exhibiting the said writ was, or ever before, had been named, or called, by the name of Richard, as by the said writ is supposed, and this, he, the said William Roe is ready to verify; wherefore, he prays judgment of the said writ, and that the same may be quashed, &c.

And William Roe, defendant in this case, maketh oath and saith, that the plea hereunto annexed is true, in substance and fact.

Plea of ne unques Executor.

And for further plea in this behalf, the said Richard Roe by leave of the Court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said John Doe ought not to have, or maintain, his aforesaid action thereof against him, because he says, that the said Richard Roe never was executor of the last will and testament of the said Charles Smith, deceased, nor ever administered any of the goods and chattels which were of the said Charles Smith, deceased, at the time of his death, as executor of the last will and testament of the said Charles Smith, deceased, in manner and form, as the said John Doe hath in his said writ, in that behalf, alleged.

Plea of plene Administravit.

And for further plea in this behalf, the said Richard Roe, by leave of the Court here, for this purpose, first had and obtained, according to the form of the statute, in such case, made and provided, says, that the said John Doe, ought not to have, or maintain his aforesaid action thereof, against him, because he says that he, the said Richard Roe, hath fully administered, all and singular, the goods and chattels, rights and credits, which were of the said Charles Smith, deceased, at the time of his death, and which have ever come to the hands of him, the said Richard Roe, as executor as aforesaid, to be administered; and that he the said Richard Roe, hath not, nor, on the day of exhibiting the action of the said John Doe, in this behalf, or at any time since, had any goods or chattels which were of the said Charles Smith, deceased, at the time of his death, in the hands of him, the said Richard Roe, as executor as aforesaid, to be administered. And this he is ready to verify; wherefore he prays judgment, if the said John Doe ought to have or maintain his aforesaid action thereof against him.

Plea of plene Administravit Prater.

And for further answer in this behalf, the defendant saith, that said John Doe ought not to have, or maintain his aforesaid action against him, except as to the sum of fifty dollars, because he says, that he, the said Richard Roe, hath fully administered, all and singular the goods and chattels, which were of the said Charles Smith, deceased, at the
time of his death, and which ever came to the hand of him the said Richard Roe, to be administered, except goods and chattels, rights and credits, to the value of fifty dollars; and that he, the said Richard Roe, hath not, nor on the day of exhibiting the action, of the said John Doe, in this behalf, or at any other time since, had any goods, or chattels, which were of the said Charles Smith, deceased, at the time of his death, in his hands to be administered, except the said goods and chattels, of the value aforesaid. And this he is ready to verify; wherefore he prays judgment, if the said John Doe, ought to have, or maintain, his aforesaid action thereof against him, the said Richard Roe, except as to the sum of fifty dollars.

Plea of the General Issue.

JOHN DOE

vs.

RICHARD ROE.

Assumpsit, in the Superior Court, Oct. term, 1846.

And now, at the term of the court aforesaid, comes the defendant in said case, Richard Roe, by his attorney Thomas Winn, and defends the wrong and injury, when, &c., and for answer saith, that the said John Doe, plaintiff, ought not to have, or maintain, his aforesaid action against this defendant, because defendant says that he did not undertake and promise, in manner and form, as the plaintiff, in his writ, has complained against him; and of this, he puts himself upon the country, &c.

Plea of total Failure of Consideration.

And for further answer, in this behalf, the said defendant saith, that the consideration, for which the note, the foundation of the plaintiff's demand was given, has wholly and entirely failed, in this, to wit: for that, said note was given for two certain black match carriage horses, which the said plaintiff, by his bill of sale, dated the first day of January, in the year of our Lord, eighteen hundred and forty-six, sold and warranted, to defendant, to be sound and well, and which said horses, the defendant avers, were, at the time of the purchase aforesaid, unsound and unwell; and were, and then and there, became of no value whatever to the defendant, and of which failure of consideration, the said plaintiff, then and there, had notice; and this he is ready to verify; whereupon, &c.

From and after the passage of this act, whenever any action or actions shall be commenced at common law, founded upon any contract or contracts, it shall, and may be lawful, for the defendant or defendants to such action or actions, upon the trial thereof, to give in evidence to the jury that the consideration or considerations, upon which said contract or contracts are, or were founded, have partially failed, any thing in any law or custom, to the contrary notwithstanding. Provided, that such plea of partial failure shall only be pleaded in such cases, under such circumstances, and between such parties, as would now admit and allow the plea of total failure of consideration: And provided further, that the plea contemplated by this act shall be fully and specially pleading at the first term of the court to which the action may be returnable, and not at any time thereafter, either at common law or on the appeal.—Act of 1836; Prin. Dig. 475.
Plea of partial Failure of Consideration.

And for further answer in this behalf, the defendant saith, that the consideration for which the note, the foundation of the plaintiff's action was given, has partially failed, in this, to wit: for that said note was given for two certain black match carriage horses, which the plaintiff, by his bill of sale, dated the first day of January, in the year of our Lord, eighteen hundred and forty-six, sold and warranted, to defendant, to be sound and well, one of which said horses, the defendant avers, was, at the time of the purchase, unsound and unwell, and was, and then and there became, of no value whatever, to the defendant, wherefore the defendant says, that the consideration of said note has failed, to the amount of one hundred dollars, of which partial failure of consideration, the plaintiff, then and there, had notice; and this he is ready to verify; wherefore, &c.

Note.—If the action be brought by the bearer, and the defendant intends to rely upon the failure of consideration, he must aver in his plea and prove upon the trial, that the plaintiff became possessed of the note after it was due, or that he took it with notice.

24. In all cases of mutual debts and set-off, where the jury shall find a balance for the defendant, such defendant may and shall enter up judgment for the amount, and take out execution in such manner as plaintiffs may do by this act: Provided such defendant shall at the time of filing his answer, also file therewith a true copy or copies of the subject matter of such set-off; and where the plaintiff shall be indebted to the defendant on open account for dealings between themselves, and where the defendant shall hold and possess in his own right, by assignment, endorsement, or otherwise, according to law, any bond, note, bill, or other writing, for money, or other thing of the said plaintiff's, such defendant shall and may, offer the same as set-off, and on due proofs shall be allowed the same.—Act of 1799; Prin. Dig. 425.

Plea of set-off.

And for further answer, in this behalf, as to all the said several supposed promises and undertakings, in the plaintiff's writ mentioned, except as to the sum of fifty dollars, parcel, &c., the said Richard Roe, by leave of the court here, for this purpose first had and obtained, according to the form of the statute, in such case made and provided, says that the said John Doe, ought not to have or maintain his aforesaid action thereof against him, because he says, that the said John Doe, before and at the time of the institution of the action, of him the said John Doe, against him, the said Richard Roe, in this behalf was, and from thence hitherto, hath been and still is, indebted to the said Richard Roe, in a large sum of money, to wit: the sum of one hundred dollars, (here state, fully and at large the subject matter of the set-off;) which said sum of money, so due and owing, from the said John Doe, to the said Richard Roe, exceeds the damages sustained by the said John Doe, by reason of the non-performance by him, the said Richard Roe, of the several supposed promises and undertakings, in the said writ mentioned, except as to the sum of fifty dollars, parcel, &c., and out of which said sum of money, so due and owing, from the said John Doe, to the said Richard Roe, he the said Richard Roe, is ready and willing, and hereby offers to set-off, and allow to the said John Doe, the full amount of the said damages, except as aforesaid, according to the form of the statute, in such case
made and provided. And this he, the said Richard Roe, is ready to verify; wherefore, he prays judgment, if the said John Doe, ought to have, or maintain, his aforesaid action thereof against him; and prays, &c.

**Plea of Infancy.**

And the said Richard Roe, by Moses Mitchell, his attorney, [or, if the defendant be still an infant, say, by Samuel West, admitted by the Court, as guardian of the said Richard Roe, to defend for the said Richard Roe, who is an infant under the age of twenty-one years,] comes and defends the wrong and injury, when, &c., and says, that the said John Doe, ought not to have, or maintain, his aforesaid action thereof against him because, he says, that the said Richard Roe, at the time of making of the several supposed promises and undertakings, in the said writ mentioned, was an infant, within the age of twenty-one years, to wit: of the age of nineteen years; and this he, the said Richard Roe, is ready to verify; wherefore he prays judgment, if the said John Doe, ought to have, or maintain, his aforesaid action against him, and prays, &c.

In all cases which hereafter may be commenced against joint obligors or promisors, and any one or more of the parties defendants may plead infancy, and such plea be sustained, the action shall not as heretofore abate, but the court shall award judgment as in cases of nonsuit, in favor of the party or parties so pleading, and permit the plaintiff to proceed against the other defendant or defendants to said suit, without further delay or costs.—*Act of 1823*; *Prin. Dig.* 454.

**Plea of the Statute of Limitation.**

And for further answer in this behalf, the defendant says, that the plaintiff ought not to have, or maintain, his aforesaid action against him, because he says, that he, the said Richard Roe, (or, if by an executor or administrator, say, the said "Richard Roe, deceased," did not at any time within six years next before exhibiting of the said action of the said John Doe, in this behalf, undertake, or promise, in manner and form, as the said John Doe hath thereof complained against him, the said Richard Roe. And this he is ready to verify, as this honorable Court may order and direct, and prays, &c.

**Another Form.**

Because, he says that the said supposed cause of action, in the said writ mentioned, did not accrue to the said John Doe, at any time within six years before the exhibiting the writ of the said John Doe against him the said Richard Roe, in this behalf, in manner and form as the said John Doe hath above thereof complained against him, the said Richard Roe; and this he is ready to verify; wherefore, &c.

In actions of *assumpsit* for the recovery of unliquidated demands, a bill of particulars shall be annexed to the copy served on the defendant; and in every case where the plea of set-off shall be filed, a copy of the set-off shall be filed at the time of filing the answer; and when the bill of particulars is not
annexed to the declaration, the plaintiff shall lose a term; and if service of said bill of particulars is not effectuated upon the defendant by the succeeding term, a non-suit shall be awarded.—58th com. law rule.

9. And the said petition and answer shall be sufficient to carry the same to the jury, without any replication or other course of proceedings.—Act of 1799; Prin. Dig. 421.

Note given in evidence.

$500. One day after date, I promise to pay John Doe, or bearer, five hundred dollars, for value received; this January 1, 1846.

Richard Roe.

The jury after the proofs are summed up, unless the case be very clear, withdraw from the bar to consider of their verdict: and in order to avoid in-temperance and causeless delay, are to be kept without meat, drink, fire or candle, unless by permission of the judge, till they are all unanimously agreed.

—3 Black.Com. 375; 1 Swift's Dig. 773.

Note.—But in Georgia, juries are allowed candle-light and water, without making application to the Court.

Any verdict or judgment, rule or order of court, which may have been ob-ained or entered up, shall be set aside, and be of no effect, if it shall appear that the same was obtained, or entered up in consequence of willful and corrupt perjury; and it shall be the duty of the court in which such verdict, judgment, rule, or order, may have been obtained or entered up, to cause the same to be set aside upon motion and notice to the adverse party; but it shall not be lawful for the said court to do so, unless the person charged with said perjury shall have been thereof duly convicted, and unless it shall appear to the said court, that the said verdict, judgment, rule, or order, could not have been obtained or entered up, without the evidence of such perjured person: saving always to third persons, innocent of such perjury, the right which they may have lawfully acquired under such verdict, judgment, rule, or order, before the same shall have been actually vacated and set aside.—Prin. Dig. 638.

26. And in case of a jury committing a contempt, or breaking up before giving in their verdict in any civil case, the court may declare the same a mis-trial, and shall fine each of the offending juror or jurors, in a sum not exceed-ing one hundred dollars.—Act of 1799; Prin. Dig. 426.

28. No verdict shall be received on any unliquidated demand where the jury have increased their verdict on account of interest; nor shall interest be given on any open account, in the nature of damages.—Act of 1799; Prin. Dig. 427.

1. From and after the first day of March, 1796, all accounts in the public offices, and all the accounts of the tax collectors of this State, shall be ex-pressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

2. The verdicts of juries, on all contracts which shall be made after the first day of March next, shall be expressed conformable to this regulation.—Act of 1796; Prin. Dig. 157.

Verdict of the Jury.

We, the jury, find for the plaintiff the sum of five hundred dollars,
for his principal debt, with interest on that sum from the second day of January, eighteen hundred and forty-six, and costs of suit.

JAMES SMITH, Foreman.

Note.—When the jury return into Court with their verdict, they are called by the Clerk and counted by the Sheriff or Bailiff. The Plaintiff’s Attorney receives the verdict from the Jury, and reads it aloud; he then moves the Court to permit it to be recorded, and hands it to the Clerk for that purpose, who enters it on the Minutes of the Court.

Judgments are the sentence of the law, pronounced by the court upon the matter contained in the record; and are of four sorts. First, where the facts are confessed by the parties, and the law determined by the court; as in case of judgment upon demurrer: secondly, where the law is admitted by the parties, and the facts disputed; as in case of judgment on a verdict; thirdly, where both the fact and the law arising thereon are admitted by the defendant; which is the case of judgment by confession or default: or, lastly, where the plaintiff is convinced that either fact, or law, or both are insufficient to support his action, and therefore abandons or withdraws his prosecution; which is the case in judgments upon a nonsuit or retraxit.—3 Blac. Com. 395.

26. In all cases where a verdict shall be rendered, the party in whose favor it may be, shall be allowed to enter and sign judgment thereon at any time within four days after the adjournment of the Court, at the Clerk’s office, for the amount of such verdict and all legal costs recoverable thereon, and no execution shall issue on any verdict until such judgment shall be entered, signed by the party or his attorney; and all the property of the party against whom such verdict shall be entered, shall be bound from the signing of the first judgment; but where several judgments shall be of equal date, the first execution delivered to the sheriff shall be first satisfied.—Act of 1799; Prin. Dig. 426.

1. That from and after the passing of this act, all property of the party against whom a verdict shall be entered and a judgment signed thereon, in conformity to the provisions of the twenty-sixth section of said act of 1799, shall be bound from the signing the first judgment, in cases where no appeal is entered; but in cases where an appeal is entered, from the first verdict, the property of the party against whom the verdict is rendered shall be bound except from the signing of the judgment on the appeal, except so far as to prevent the alienation by the party of his, her or their property, between the signing of the first judgment and the signing of the judgment on the appeal.

2. All judgments signed on verdicts rendered at the same term of the Court, be considered, held and taken to be of equal date; and no execution founded on said judgments, obtained at the same term as aforesaid, shall be entitled to any preference by reason of being first placed in the hands of the officer.

3. [Repealed by act of 1823.]

4. No judgment shall be enforced by the sale of any real or personal estate which the defendant may have sold and conveyed to a purchaser for a valuable consideration, and without actual notice of such judgment; Provided, such purchaser, or those claiming under him, by such sale and conveyance, have been in peaceable possession of such real estate for seven years, and of such personal estate four years, before the levy shall have been made thereon.—Act of 1822; Prin. Dig. 451.

1. All judgments that have been obtained since the said 19th day of December, 1822, and all judgments that may be hereafter rendered in any of the
courts of this state, on which no execution shall be sued out, or which execu-
tions, if sued out, no return shall be made by the proper officer for executing
and returning the same within seven years from the date of the judgment, shall
be void and of no effect; **Provided,** that nothing in this act contained shall pre-
vent the plaintiff or plaintiffs in such judgments from renewing the same after
the expiration of the said seven years, in cases where by law he or they would
be otherwise entitled so to do, but the lien of such revived judgments on the
property of the defendants thereto, shall operate only from the time of such re-
vival.

2. When any judgment or execution has been declared void and of no effect
by the construction given by any of the courts to the said third section of such
act, the said judgment and execution so declared void and of no effect shall,
and is hereby declared to be in as full force and effect as though the said act
had not been passed.—**Act of 1823; Prin. Dig. 458.**

2. In all cases where judgments may hereafter be obtained, all such judg-
ments shall be entered up for the principal sum due with the interest, but no
part of such judgment shall bear interest, except the principal which may be
due on the original debt, any law, usage, custom, or practice to the contrary
notwithstanding.—**Act of 1814; Prin. Dig. 294.**

27. No confession of judgment shall hereafter be entered up, but in the
county where the defendant or defendants may reside, or unless the cause hath
been regularly sued out and docketed in the usual way as in other cases, nor
until such cause be called in order by the court for trial.—**Act of 1799; Prin.
Dig. 427.**

**Confession.**

_April term, 1846, I hereby confess judgment to the Plaintiff, for the
sum of five hundred dollars, principal debt; the sum of twenty-five dol-
lars interest, and costs of suit; reserving the right of Appeal._

_John Wilson, Def'ts Att'y._

From and after the passing of this act, all judgments obtained in the supe-
rior, inferior or justices' courts of this state, shall be entitled to the right or claim
of any money received by the sheriffs, coroners or constables, agreeable to the
date of such judgment or judgments, and that all the property belonging
to the defendant or defendants, shall be bound and subject to the discharge
of the first judgment or judgments, obtained in either of the aforesaid courts;
**Provided,** the demand of such right is made before any of the aforesaid officers
have paid the money over to the plaintiff in interest: any law, usage or custom
to the contrary notwithstanding. [All this section except the proviso is con-
sidered as supplied in the subsequent acts.]—**Act of 1810; Prin. Dig. 435.**

1. That from and after the passing of this act, that whenever two or more
joint contractors, or copartners, are sued in the same action, and a service shall
be effected on one or more of the said joint contractors, or copartners; and the
sheriff or other officer serving the writ shall return that the other defendant or
defendants are not to be found, it shall and may be lawful for the plaintiff to
proceed to judgment and execution against the defendant or defendants who
are served with process, in the same manner as if he, she or they were the sole
defendant or defendants.

2. Judgments so obtained shall bind, and execution may be levied on the
joint or copartnership property, and also the individual property, real and per-
sonal, of the defendant or defendants who have been served with a copy of the
process, but shall not bind or be levied on the individual property of the de-
fendant or defendants who are not served with process.—**Act of 1820; Prin.
Dig. 445.**
1. For the avoiding of unnecessary suits and delays, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, that in all actions, personal, real, or mixt, the death of either party between the verdict and the judgment, shall not hereafter be alleged for error; so as such judgment be entered within two terms after such verdict.

2. And be it further enacted by the authority aforesaid, where any judgment after a verdict shall be had, by, or in the name of any executor or administrator, in such case an administrator de bonis non may sue forth a seire facias, and take execution upon such judgment.—Sch. Dig. 246.

Note.—The following is extracted from the note of Judge Schley, on the above statute: "At common law, the death of the plaintiff, at any time before final judgment, abated the suit, but by this statute, if either party die between verdict and judgment, his death shall not be alleged for error, so as the judgment be entered within two terms after the verdict. In the construction of this statute it has been held, that the death of either party before court, is not remedied, but if the party die after the court has commenced, though before the trial, that case is within this statute, for the term of the court is but one day in law, and this is a remedial act, which shall be construed liberally; and therefore a verdict and judgment may pass against such party though dead.—Tidd's Prac. 848; Toll. Ex'ts. 447; 7 Term Rep. 31; 1 Salk. 8. The judgment upon this statute is entered as if the party were alive, and must be entered or signed within two terms after the verdict.—1 Salk. 42; Tidd's Prac. 848.

19. All judgments which may be obtained in, and executions issued from, any justices' court after the passing of this act, shall bear equal dignity with judgments obtained in and executions issued from the superior or inferior courts, and shall bind all the property of the defendant from the date of the said judgment, and also all the property of his, her, or their securities from the time of their entering themselves as such until the same shall be satisfied.—Act of 1811; Prin. Dig. 507.

In all and every case when a verdict has been obtained at common law, and an appeal entered without judgment signed upon the said verdict, judgment shall not afterwards be signed further back than the time of disposing of said appeal.—66th com. law rule.

No part of the judiciary laws of this State shall be so constructed as to require the renewal of any judgment as heretofore practiced, or in any other manner whatever.—Act of 1812; Prin. Dig. 440.

Judgment.

Whereupon, it is considered by the Court here, that the plaintiff John Doe, do recover against the defendant, Richard Roe, the sum of five hundred dollars, for his principal debt, the sum of thirty dollars, for his interest, and the sum of twelve dollars and fifty cents for his costs, in this behalf laid out and expended, and the defendant in mercy, &c. Judgment signed this May 1, 1846.

Simon Wake, Pl'ff's Att'y.

26. Provided always, that any party against whom such judgment shall be entered, may enter good and sufficient security, either in open court or in the clerk's office, within the time aforesaid, for the payment of the judgment and costs within sixty days, and if such party shall not pay the same agreeably thereto, execution may issue against such party and the security, without any other proceeding thereon.—Act of 1799; Prin. Dig. 426.

3. Where security shall have been given, or may hereafter be given for the stay of an execution after judgment, execution shall issue as in cases of appeal against the principal and security, jointly or severally, and proceed and be controlled in like manner.—Act of 1826; Prin. Dig. 461.
Stay-Bond.

JOHN DOE, by]

RICHARD ROE.

Verdict for the plaintiff for five hundred dollars, principal, thirty dollars interest, and costs of suit.

The defendant in the above case, comes forward and demands a stay of execution, according to the statute, in such case made and provided, and brings Charles Smith; and tenders him as his security, and they, the said Richard Roe and Charles Smith, acknowledge themselves, jointly and severally, bound to John Doe, the plaintiff, for the payment of the said judgment and costs, in said cause.

In testimony whereof the said Richard Roe and Charles Smith, have hereunto set their hands and affixed their seals, this May 1, 1846.

Tested and approved, by Richard Roe, [L. S.]

James Holdfast, clerk.

Charles Smith, sec'y. [L. S.]

26. And provided also, that in case either party shall be dissatisfied with the verdict of the jury, then, and in all such cases, either party may, within four days after the adjournment of the court in which such verdict was obtained, enter an appeal in the clerk's office of such court, (as matter of right;) and if such verdict shall be obtained in the inferior court, it shall be the duty of the clerk thereof to transmit such appeal to the clerk of the superior court of the county in which such verdict shall be obtained, who shall enter the same on the appeal docket, which appeal shall be admitted and tried by a special jury. Provided the person or persons so appealing, shall, previous to obtaining such appeal, pay all costs which may have arisen on the former trial, and give security for the eventual condemnation money, except executors and administrators, who shall not be liable to give such security; but if, on hearing such appeal, it shall appear to the jury that the appeal was frivolous, and intended for delay only, they shall assess damage to the party aggrieved by such delay, not exceeding twenty-five per centum on the principal sum which they shall find due, and such damages as shall be so assessed, shall be specially noted in the verdicts of such jurors, and no person shall be allowed to withdraw an appeal after it shall be entered, but by the consent of the parties.—Act of 1799; Prin. Dig. 426.

1. That from and after the passage of this act, it shall and may be lawful, whenever there shall be more than one party plaintiff or defendant, and one or more of said parties, plaintiff or defendant, desire to appeal, and the other or others refuse or fail to appeal, it shall and may be lawful for any party, plaintiff or defendant, to enter his appeal, under such rules and regulations as are now provided by law.

2. That upon the appeal, either of the plaintiff or defendant, as aforesaid, the whole record shall be taken up, but in case damages shall or may be awarded upon such appeal, such damages shall only be recovered against the party or parties appealing, and their securities, and not against the party or parties failing or refusing to appeal.

3. That in case any such security or securities shall be compelled to pay off the debt or damages for which judgment may be entered, in any cause, he, she, or they shall have recourse only against the party or parties for whom he, she, or they became security or securities.—Act of 1839; Pamp. p. 142.

1. That in case either party in the said courts of ordinary, shall or may be dissatisfied with any decision thereof, then and in all such cases, such dissatisfied party may within four days after the adjournment of the said court, be allowed to enter an appeal, by paying all costs which may have accrued, and giving security to the clerk of the said court of ordinary for such further costs as may accrue by reason of such appeal, which appeal so entered, shall be by the
said clerk transmitted to the clerk of the superior court of the county in which such proceedings may take place, at least ten days before the next superior court of said county; and which said superior court shall determine thereon at such term, according to law and right, and letters testamentary or of administration, shall not be granted or issued until the decision of such appeal by the said superior court, but the said court of ordinary may, pending such appeal, grant temporary letters to collect the estate of the deceased.—

Act of 1805; Prin. Dig. 238 and 910.

That from and immediately after the passing of this act, all appeals taken up from the decision of the several courts of ordinary of this State to the superior court, touching the probate of wills, and granting letters of administration, in which matters of fact are involved, shall be tried and determined by a special jury of the county where the case may happen, in the same way and under the same regulations as other appeals; any law, usage, or custom, to the contrary notwithstanding.—Act of 1823; Prin. Dig. 455.

1. That from and after the passage of this act, when any party, plaintiff or defendant, in any suit at law, or in equity, hereafter to be commenced, in any of the courts of this State, where the party cast shall be dissatisfied with the decision, and shall be unable to pay cost and give security, as now required by law, if such party will make and file an affidavit in writing, that he or she is advised, and believes that he or she has a good cause of appeal, and that owing to his or her poverty, he or she is unable to pay the cost and give security, as now required by law in cases of appeal, such party shall be permitted to appeal without the payment of cost, and without giving security, as heretofore practiced in this State.—Act of 1842; pamp. p. 13.

Affidavit.

STATE OF GEORGIA—HOUSTON COUNTY.

CLERK’S OFFICE, SUPERIOR COURT.

JOHN DOE

VER.

RICHARD ROE

ASSUMPSIT, &c.

The defendant being duly sworn, says, that he is unable to pay the costs, and give the security, as now required by law in cases of appeal, that he is advised, and believes, that he has a good cause of appeal, and that, owing to his poverty, he is unable to pay the costs, and give security, as now required by law.

Sworn to and subscribed, before me, this May 1, 1846.

James Holdfast, clk.

RICHARD ROE.

1. That in all cases hereafter to be tried in any of the courts of this State, when either the plaintiff or defendant shall hereafter depart this life, after said cause has been tried, and before the time has expired which such party has (been) allowed by law to enter an appeal, and no appeal shall have been entered, it shall be the right of the legal representatives of such party dying to enter an appeal within four days from the time such executor or administrator shall have been qualified; Provided, however, that in the construction of this act, no appeal may be entered in causes not the subject matter of appeal.

2. That whenever an appeal shall be entered under this act, it shall not be necessary to revive suit under scire facias; but suit shall be revived by the party giving notice to the adverse party within thirty days from the time of
appeal; and whenever a defendant shall appeal, said cause shall stand for trial on the appeal docket, at the first court after twelve months shall have expired after such executor or administrator shall have been qualified.—Act of 1843; pamph. p. 124.

No appeals shall be entered unless good security is given: exceptions to the security on the appeal must be taken on or before the last day of the first term of the appeal: and if such exceptions are sustained, other, and good security, shall be given, or the appeal will be dismissed. If the security, good at first, becomes insolvent pending the appeal, the party appealing shall give other good security, in the discretion of the court, or the appeal shall be dismissed.—2d com. law rule.

Appeals must be entered by the appellant in person, or by his attorney at law, or by his attorney in fact, duly authorised by warrant for that purpose; which warrant shall be filed in the clerk's office at the time of entering the same. Upon cause shown, the court will allow time to file such warrant; but such appeal shall be, of course, dismissed, and execution issue without further order, if such warrant be not filed within the time allowed.—3d com. law rule.

Appeals shall be tried at the first term after the appeal has been entered, unless good cause be shown for a continuance; among which good causes for a continuance, a motion on oath to make a substantial amendment to either declaration or answer shall be considered sufficient, unless the opposite party shall permit the amendment to be made instanter. No appeal case shall be continued more than twice by the same party, but for unavoidable providential cause.—4th com. law rule.

When an appeal is entered, either of the parties litigant may make any amendment of the declaration, or answer, they may deem necessary. The party amending shall give notice thereof in writing, accompanied by a copy of the amendment, to the adverse party, three months previous to the next term, after the appeal; and if the party amending fail to give such notice, and the adverse party will state on oath, or the attorney at law state in his place, that he is taken by surprise, and is less prepared for trial in consequence of the amendment, the cause shall be continued by the amending party.—5th com. law rule.

The following shall be the form of the recognizance, upon an appeal to be taken by the several clerks of the superior and inferior courts in all cases of appeal, which recognizance shall be entered on the minutes of the court, and attested by the clerk.—6th com. law rule.

Appeal Bond.

JOHN DOE, \{ Judgment and verdict for the plaintiff, for five hundred dollars, interest, and costs of suit.\\

RICHARD ROE.\\

The defendant being dissatisfied with the verdict of the jury rendered in the above cause, and having paid all costs, and demanded an appeal, brings Charles Smith, and tenders him as his security, and they, the said Richard Roe and Charles Smith, acknowledge themselves, jointly and severally, bound to John Doe, the plaintiff, for the payment of the eventual condemnation money, in said cause.

In testimony whereof, they have hereunto set their hands and seals, this first day of May, 1846.

Tested and approved, by

James Holdfast, C. S. C.\\

Richard Roe, [L. S.]\\

Charles Smith, sec'y. [L. S.]
All special jurors shall be taken from the grand jury list of the county, and
struck in the presence of the court in the following manner: the clerk shall
produce a list of the grand jurors present, and there empaneled, from which
the parties, plaintiff and defendant, or their attorney, may strike out one al-
ternately, until there shall be but twelve jurors left, who shall forthwith be
empaneled and sworn, as special jurors to try the appeal cause; and in all
cases the appellants shall strike first, and in cases of refusal in either to strike
such special jurors, after due notice given for the purpose, and proof thereof,
the judge before whom such notice is given for such special jury to be em-
paneled, shall on behalf of such absent party, or his attorney, proceed in the
same way and manner, as if the party absent or refusing had been present or
consented to the same.—Act of 1810; Prin. Dig. 435.

List of Special Jurors.

JOHN DOE, Plfiff and Resp't. \{ Assumpsit, Oct. term, 1846.
RICHARD DOE, Deft't and Appel't.

1. JOHN ROUND, 7. JAMES PHILIPS,
2. CHARLES ROPER, 8. JOHN MAYS,
3. HENRY V. DAVIES, 9. RICHARD SAVAGE,
4. PETER A. WILSON, 10. THOMAS BELL,
5. SAMUEL ROGERS, 11. JAMES O. MORRIS,
6. JOHN DAWSON, 12. LAWRENCE HALL.

Oath of Special Jurors.

You shall, well and truly, try each cause submitted to you during the pres-
ent term, and a true verdict give, according to equity, and the opinion you
entertain of the evidence produced to you, to the best of your skill and know-
ledge, without favor or affection to either party; Provided, you are not dis-
charged from the consideration of the case or cases submitted; so help you
God.—Act of 1811; Prin. Dig. 437.

2. Whenever it shall so happen that the jury is confined in the investi-
gation of any case, for a length of time, which exposes them to hunger or
cold, or both, the court may, on application from said jury, direct them to be
furnished, at their own expense, with such nourishments as in his own judg-
ment may seem just and proper; and permit them to have provisions and
fire, or either, if circumstances should, in the judgment of the court, require
it.—Act of 1831; Prin. Dig. 472.

Verdict.

We, the jury, find for the plaintiff and respondent, JOHN DOE, the
sum of five hundred dollars, for his principal debt; the sum of seventy
dollars, for his interest, with costs of suit. And we further find for the
plaintiff and respondent, the sum of ten per cent. damages, on the
principal sum, for a frivolous appeal.

JOHN ROUND, Foreman.

2. In all cases of appeal where security hath been given, and hereafter
given, and hereafter to be tried, it shall and may be lawful for the plaintiff or
his attorney to enter up judgment against the principal and the security; jointly
or severally, and execution shall issue accordingly and proceed against either
or both, at the option of the plaintiff until he is satisfied; Provided, neverthe-
less, if the execution against the security or securities be first paid by him or
DEBT—ASSUMPSIT—JUDGMENT, ETC.

them, then the execution against the principal shall still be of force and under the control of the security or securities, until the same be satisfied by said principal.—Act of 1826; Prin. Dig. 461.

Judgment on the Appeal.

John Doe, Plff and Resp't.
vs
Richard Roe, Def't and App'd.

and

Charles Smith, Soc'ty on Appeal.

Whereupon, it is considered by the court that the plaintiff and respondent, do recover against the defendant and appellant, and his security, on the appeal, Charles Smith, the sum of five hundred dollars for his principal debt; the sum of eighty dollars for his interest; fifty dollars for his damages, for a frivolous appeal, and the further sum of ten dollars and ten cents for his costs, in this behalf laid out and expended, and the defendant, in mercy, &c. Judgment signed this May 1, 1846.

Simon Wake, Plaintiff's Attorney.

The next species of execution is against the goods and chattels of the defendant, and is called a writ of fieri facias, from the words in it where the sheriff is commanded quod fieri facias de bonis, that he cause to be made of the goods and chattels of the defendant the sum or debt recovered. This lies as well against privileged persons, peers, &c., as other common persons: and against executors or administrators with regard to the goods of the deceased. The sheriff may not break open any outer doors, to execute either this or the former writ: but must enter peaceably; and may then break open any inner door, belonging to the defendant, in order to take the goods. And he may sell the goods and chattels (even an estate for years, which is a chattel real) of the defendant, till he has raised enough to satisfy the judgment and costs: first paying the landlord of the premises upon which the goods are found, the arrearages of rent then due, not exceeding one year's rent in the whole. If part only of the debt be levied on a fieri facias, the plaintiff may have a capias ad satisfaciendum for the residue.—3 Blac. Com. 417.

Note.—It is proper here to remark that the provision in favor of the landlord, in the above rule of law, is not of force in this State.

1. All executions shall be issued and signed by the clerks of the several courts in which judgments shall be obtained, and bear test in the name of one of the judges or presiding justices of such courts, and shall bear date from the time of issuing, shall be directed to all and singular the sheriffs of this State, and may be levied on the estate both real and personal of the defendant or defendants, or issue against the body of the defendant at the option of the plaintiff, which execution shall be of full force until satisfied, without being obliged to be renewed on the court roll from year to year as heretofore practiced. And when the defendant shall point out any property on which to levy the execution, being in the hands and possession of any person not a party to such judgment, the sheriff shall not levy thereon, but shall proceed to levy on such property as may be found in the hands and possession of the defendant, who shall nevertheless be at liberty to point out what part of his property he may think proper, which the sheriff shall be bound to take and sell first, if the same is in the opinion of the sheriff sufficient to satisfy such judgment.—Act of 1811; Prin. Dig. 436.

1. In all cases where any person or persons hath heretofore entered himself as security on appeal, or for stay of execution in any case, in any court in this State, and may subsequently thereto have paid off and discharged the execution issuing in such case, it shall and may be lawful for such security to apply
to the sheriff, clerk, constable, marshal, or attorney, to whom such payment may be made, and procure an entry or certificate to be made on such execution, that the same was paid by the security, and such security shall thereupon be entitled to the use and control of such execution for the purpose of proceeding against the principal.—*Act of 1826*; *Prin. Dig. 461.*

4. The different sheriffs in this State shall keep fair and regular execution dockets, wherein they shall enter all executions delivered to them, and the dates of such delivery, together with all their actings and doings thereon, and file the same in the clerk's office, out of which such executions may have issued, on or before the first day of the meeting of the court to which they may be made returnable, which said dockets shall remain in the said offices, subject to the inspection of all persons concerned therein.

5. Where it shall appear by the sheriff's return on any execution or executions, that the same has been paid by a security or securities, it shall be the duty of the clerk to make such entry in such docket-book, and such security or securities shall have the use and control of said execution for the purpose of remunerating him or themselves out of the principal for whom he or they stood security.—*Act of 1810*; *Prin. Dig. 436.*

1. That from and after the passage of this act, it shall and may be lawful for any person or persons, who have heretofore become security on any note, bond or other contract, and not interested in the consideration thereof, and judgment has been rendered against them, and execution issued accordingly, and such security or securities have been heretofore compelled to pay off such judgment or execution, he, she, or they, shall be entitled to the control of the same for the purpose of remunerating him, her, or them, out of the property of the principal or principals: *Provided, always,* that it shall be made satisfactorily appear to the court from whence the execution issued, that such person or persons assuming to have the control of any judgment or execution as aforesaid, were bona fide security or securities only upon the original bond, note, or contract, which was the foundation of the judgment and execution.

2. Where any security or securities as aforesaid, shall fail at the trial of the note, bond, or other instrument, upon which he, she, or they, were security or securities, to make special defence thereof, it shall be lawful for such security or securities to take control after payment thereof, of said fi. fa. after complying with the requisitions of the first section of this act, and that all laws and parts of laws militating against this act, are, and the same are hereby repealed.—*Act of 1831*; *Prin. Dig. 470.*

That from and immediately after the passage of this act, it shall and may be lawful for all persons who shall hereafter become endorsers on any promissory note, bond, or other contract, made in the face thereof, payable at any chartered bank, or which shall be negotiated at any chartered bank, or deposited there for collection, and where said endorsers are not interested in the consideration thereof, and judgment has been rendered against them, and execution has been issued thereon accordingly, and where such endorser or endorsers, shall hereafter be compelled to pay off such judgments or executions, he, she, or they, shall be entitled to the full control of each and every judgment, or execution, that shall or may be founded upon the same instrument as against the makers thereof, and all prior endorsers thereon, for the purpose of reimbursing and remunerating him, her, or themselves, out of the property of said maker and endorsers: *Provided,* the persons applying for such control shall make it appear to the court from whence the execution issued, that he was only endorser thereon, and not interested in the consideration of said contract, and that he
has bona fide paid off and discharged the judgment or execution that has been rendered or issued against him, and all costs on the other judgments.—*Act of 1839*; *pamp. p. 58.*

4. In all cases brought by any endorsee or endorsees, assignee or assignees, on any bill, bond, or note, before any court of law and equity in this State, the assignment or endorsement, without regard to the form thereof, shall be sufficient evidence of the transfer thereof, and the said bond, bill, or note, shall be admitted as evidence, without the necessity of proving the handwriting of the assignor or assignors, endorser or endorsers; any law, usage, or custom to the contrary thereof notwithstanding.—*Act of 1810*; *Prin. Dig. 211.*

1. That from and immediately after the passage of this act, any security (who may be sued together with other securities) shall pay or discharge any execution or executions, issued against principal or co-securities, shall, after an entry is made on the said executions by the collecting officer, that the same has been well and truly paid by said security, then and in such cases, the said security so paying or discharging said execution against each co-security who may have been made a party to said suit, for the proportionable part equally due by each, and no more. *Provided, nevertheless,* that all should be equally responsible; if not, then to be equally divided or paid by those who are.

2. That any execution so paid or satisfied by two or more securities, shall be held as the joint property of said securities against all the parties equally concerned for their proportionable part.

3. That after payment and entry made, as herein prescribed, it shall be the duty of the officer making the entry to deliver said execution to the security who shall have made the payment, to be used and controlled as herein mentioned.—*Act of 1840*; *pamp. p. 173.*

That from and after the passage of this act, no judgment or execution shall be arrested or annulled in any case where the judgment has been entered up, or the execution issued in favor of co-partners, or against co-partners, where the partnership style is used therein, instead of the christian and surnames of each person composing such partnership, as has been held to be necessary by some of the judges of this State; but such judgment or execution shall not for such omission on the part of any officer of the court, clerk, or justice of the peace, be affected or delayed in anywise thereby.—*Act of 1840*; *pamp. p. 114.*

2. That all executions hereafter issued by the clerks of the superior and inferior courts, in favor of, or against any sheriff of this State, shall be directed to the coroner of the county in which such sheriff may reside, and to all and singular the sheriffs of the State, except the sheriff of the county in which the interested sheriff may reside, which may be levied, served and returned by the said coroner or other sheriff, at the option of the plaintiff.

3. That when a sheriff shall levy on property by virtue of any execution directed as required by the second section of this act, said property shall be sold in the county in which the levy may be made.

4. That when said process or execution shall be served or levied by a sheriff, out of his own county, that the sheriff so serving and returning the same, shall receive in addition to the fees established by law for such service or levy, the sum of two dollars.—*Act of 1840*; *pamp. p. 114.*

From and after the passage of this act, it shall and may be lawful for the plaintiff in any judgment or execution to sell or transfer the same by written assignment, or control, and said sale or assignment shall not be considered a discharge or satisfaction of said execution, but the assignee may proceed to
Debt—Assumpsit—Judgment, etc.

Collect the same for his own use and benefit, in as full and ample a manner as
the plaintiff could have done if no such transfer or assignment had been made.
[Act of 1829; Prin. Dig. 464.]

Transfer.

May, 1, 1846.—For value received, I hereby transfer and assign, to
Charles Smith, the within fl. fa. and the judgment upon which it is
founded. Said Charles Smith is to have, use and control said fl. fa.
and judgment, for his own use and benefit, at his costs and charges, without recourse on me.

John Doe, Proj.

Fi. Fa.

STATE OF GEORGIA, } To all and singular the Sheriffs of this State—

Houston County. 

We command you, that of the goods and chattels, lands and ten-
ements of John Doe, (in your bailiwick) you cause to be made the
sum of one hundred dollars, for his debt, and fifteen dollars, for his
costs and charges, in that behalf expended; which latterly, to wit: on
the twenty-fifth day of April, in the year of our Lord, eighteen
hundred and forty-six, Richard Roe, in our Superior Court, held at
Perry, in the county aforesaid, recovered against said John Doe,
whereof the said John Doe is convicted, and liable, as to us appears,
of record: and have the said moneys before the said court at Perry,
aforesaid, on the fourth Monday in October next, to render to the said
Richard Roe, his damages, costs and charges, aforesaid. And have
you, then and there, this writ.

Witness, the honorable Thomas Stiles, one of the judges of the said
Superior Court, this first day of May, in the year of our Lord, one
thousand eight hundred and forty-six. James Holdfast, Clk.

33. No sales in future shall be made by sheriffs of property taken under
execution, but on the first Tuesday in each month, and between the hours
of ten and three in the day; and it shall be the duty of the sheriffs to give
thirty days’ notice in one of the public gazettes of this State, of all sales of
lands and other property executed by him, and also advertise the same in three of
the most public places in the county where such sales are to be made, and
shall give a full and complete description of the property to be sold, making
known the name of the defendant, and the person who may be in possession
of the property, except horses, hogs, and cattle, which may be sold at any
time by the consent of the defendant; and in which case it shall be his duty
to give the plaintiff ten days’ notice thereof, and also to advertise the same in
three or more of the most public places in the county where such property
may be, at least ten days before the sale.—Act of 1799; Prin. Dig. 427.

That from and after the passing of this act, the hours of sheriffs’ and con-
stables’ sales will be from ten o’clock in the forenoon until four o’clock in
the afternoon; all laws and parts of laws militating against this act be, and
the same are hereby repealed.—Act of 1821; Prin. Dig. 451.

2. It shall not hereafter be lawful for any sheriff within this State, to levy
upon, or sell any land which lies out of the county of which he is sheriff; any-
thing in any law to the contrary notwithstanding.—Act of 1808; Prin. Dig.
434.
That from and after the passage of this act, in all cases where **fieri facias** are placed in the hands of sheriffs or other officers, as aforesaid, when no property can be found subject to the same, and such sheriffs or other officers shall make such entry on such **fieri facias** or such executions, he or they shall be entitled to the usual fee or charge of a levy; any custom or practice to the contrary notwithstanding.—*Act of 1840; Pamp. p. 53.*

When any sheriff, coroner, constable, town or city marshal, or other officer of this State, has several executions in his hands at the same time against the same defendant, it shall not be lawful for such officer to detain the costs on any younger judgments to the prejudice of those of older date, except in a case of a younger judgment creditor shall previous to older ones point out property to the officer; then it may and shall be lawful for the officer to retain the levy and advertising costs, and no more, on such younger judgment.—*Act of 1822; Pamp. Dig. 452.*

1. That from and after the first day of March next, the following articles be exempt from levy and sale on account of any debt contracted after that day, to wit: two beds and bedding, common bedsteads, a spinning-wheel, and two pair of cards, a loom, and cow and calf, common tools of his trade, and ordinary cooking utensils, and ten dollars worth of provisions.—*Act of 1822; Pamp. Dig. 291.*

From and after the passage of this bill, in addition to the articles exempt from sale in the above-recited act shall be added the Family-Bible of all debtors who may be entitled to the benefits of the said act.—*Act of 1834; Pamp. Dig. 293.*

From and after the passage of this act, the privileges and benefits extended to debtors' families in the above-recited act [*act of 1822*] shall be, and they are hereby extended to all widows, and their families, during their widowhood, under the same rules, regulations, and restrictions, as govern the articles exempted for the use of debtors' families, in the before recited act.—*Act of 1835; Pamp. Dig. 293.*

1. That every white citizen of this State, male or female, being the head of a family, shall be entitled to own, hold, and possess, free and exempt from levy and sale, by virtue of any judgment, order, or decree, of any court of law or equity in this State, *founded on any contracts made after the first day of May next,* or any process emanating upon the same, twenty acres of land, and the additional sum of five acres for each of his or her children under the age of fifteen: Provided, that the same, or any part thereof, be not the site of any city, town or village, or of any cotton or wool factory, saw or grist mill, or of any other machinery propelled by water or steam. Also, one horse, or mule, the value of which shall not exceed fifty dollars; also, ten head of hogs, and thirty dollars worth of provisions.

2. That when any head of a family shall own a greater quantity of land than that exempted from levy and sale by the provisions of the first section of this act, that he or she shall procure the county surveyor to lay off the number of acres so exempted, so as to include the dwelling-house and improvements of the original tract, (if there be any thereon): Provided, that the value of said dwelling-house and improvements shall not exceed two hundred dollars—the value to be ascertained and certified to by three valuing agents, who shall be appointed as follows: one by the plaintiff in execution, or his or her attorney or agent; one by the defendant in execution, and one by a justice of the peace in the district where the said dwelling-house and improvements are. And he or she shall designate in writing to the sheriff, or other officer in whose hands the process directing a levy and sale may be, the boundary so laid off, and it
shall not be lawful for such sheriff, or other officer, to levy on or sell the tract so designated.

3. That no land shall be exempted from levy and sale under the provisions of this act which derives its chief value from other causes than its adaptation to agricultural purposes.

4. That whenever any male head of a family shall hold land under the provisions of this act, that no sale that he may make of the same, or any part thereof, shall be good and valid in law, unless his wife (if he have any), shall, of her own choice and free will, sign the deed of such sale together with her husband.—*Act of 1841*; *pamp. p. 134.*

1. That from and after the passage of this act, the amount of fifty acres of land to the head of each family, be and the same is hereby declared to be exempt from levy and sale by virtue of any judgment, order, or decree, of any court of law or equity in this State, founded on any contracts made after the first day of January next, except the same shall be for the purchase-money of said land, for the payment of which said land shall be bound.—*Act of 1843*; *pamp. p. 121.*

That the provisions of the act to exempt from levy and sale under execution, certain property therein mentioned, assented to December the eleventh, eighteen hundred and forty-one, and the act amending the same, assented to on the twenty-second of December, eighteen hundred and forty-three, be extended to the citizens of any city, town, or village in this State, and to exclude real property in such places, not exceeding in value two hundred dollars.—*Act of 1845*; *pamp. p. 42.*

2. In all cases where any debtor shall have the benefit of the above-recited act (*Act of 1822*) extended to him, it shall be the duty of the officer levying the execution to make out a schedule of the articles so exempted from seizure and sale, and return the same to the clerk of the inferior court of said county, whose duty it shall be to record the same in a book kept by him for that purpose; then the above property shall be alienated and vested in the inferior court, to be appropriated to the benefit and use of said family, so long as the defendant shall remain insolvent.—*Act of 1822*; *Prin. Dig. 291.*

From and immediately after the passage of this act, no sheriff, or other officer, shall hereafter levy on any growing crop of corn, wheat, oats, rye, potatoes, cotton, rice, or any other crop usually raised or cultivated by the planters or farmers of this State, nor sell the same until the said crop or crops shall become matured or fit to be gathered: Provided, this act shall not prevent any of said officers from levying on and selling crops, as heretofore practiced, when the debtor or debtors shall abscond or remove from the State or county, nor from selling growing crops with land.—*Act of 1836*; *Prin. Dig. 476.*

**Levy.**

*May 1, 1846.* I have this day levied this fl. fa. on lot of land, number forty-nine, in the tenth district, with its appurtenances and improvements, as the property of the defendant, and have given Robert Thomas, the person in possession, written notice thereof.

**William Harriston, Shiff.**

1. It shall hereafter be the duty of the sheriffs of the several counties in this State, when they levy any execution on land, to leave a written notice of the said levy with the owner, if in the county, or tenant in possession, if any, or transmit the same to him, her, or them, in five days after such levy.—*Act of 1808*; *Prin. Dig. 434.*
Notice by the Sheriff.

STATE OF GEORGIA,

Houston County.

To Robert Thomas: You are hereby notified, that I have this day levied a fi. fa. issued from the honorable superior court, of said county, in favor of John Doe, against Richard Roe, on lot of land number forty-nine, in the tenth district of said county, as the property of the said defendant, and that said lot of land will be advertised and sold, agreeably to the statute in such case made and provided; this May 1, 1846.

William Harriston, Sh'ff.

[Directing sheriffs to advertise in their respective circuits has been modified in so many cases, that the exceptions are believed to be more numerous than the rule; and errors in this respect, when they occur, are always cured by the legislature. The Act of 1822, vol. IV., 403, heals all such informalities in Gwinnett, Habersham, Rabun, and the whole of the Flint and Southern circuits, and subsequently in the Chattahoochee circuit, and in Taliaferro county, by Act of 1825, vol. IV., 342.—And see the table of references to county acts, at the end of the volume, for any such act in relation to any particular county.]—Act of 1808; Prin. Dig. 454.

1. From and after the passage of this act, it shall and may be lawful for the clerks of the superior and inferior courts and courts of ordinary, sheriffs, coroners, and other officers of the several counties in the Southern, Flint, Ocmulgee, and Western circuits, and of the county of Warren, and they are hereby required to publish their advertisements in any of the gazettes published in Milledgeville, or within their circuits.

2. The deputy sheriffs in the counties aforesaid shall, and they are hereby required to advertise their sales in the same gazette in which the principal sheriff shall advertise his sales; Provided, such sheriffs or deputies shall, within twenty days after entering on the duties of their office, give notice, by written advertisement, at their respective court-houses, continuing the same sixty days, specifying the paper selected; also, notice of such selected paper shall be given in the Georgia Journal, of Milledgeville.—Act of 1825; Prin. Dig. 460.

Sheriff's Sale.

STATE OF GEORGIA,

Houston County.

On the first Tuesday in June next, will be sold at Perry, in said county, within the legal hours, lot of land number forty-nine, in the tenth district of said county, with its appurtenances; said lot of land is well improved—levied on as the property of Richard Roe, to satisfy a fi. fa. issued from the Superior Court of said county, in favor of John Doe, this May 1, 1846.

William Harriston, Sh'ff.

2. The first section of the before recited act, shall not be so construed as to authorise any Judge of the superior courts to order writs of possession to issue against a third person residing within the limits of any such survey or tract of land so offered for sale; provided also that such person shall not be known in the suit on which such execution is founded, nor have been put in possession by, or claimed under or by virtue of any conveyance from the defendant in such suit.—Act of 1811; Prin. Dig. 439.
CHAPTER VII.

BAIL.

When the defendant is regularly arrested, he must either go to prison for safe custody, or put in special bail to the sheriff. For, the intent of the arrest being only to compel an appearance in court at the return of the writ, that purpose is equally answered, whether the sheriff detains his person, or takes sufficient security for his appearance, called bail, (from the French word bailer, to deliver,) because the defendant is bailed, or delivered, to his securities, upon their giving security for his appearance; and is supposed to continue in their friendly custody instead of going to jail. The method of putting in bail to the sheriff is by entering into a bond or obligation, with one or more sureties, (not fictitious persons, as in the former case of common bail, but real, substantial, responsible bondsmen,) to ensure the defendant's appearance at the return of the writ; which obligation is called the bail-bond. The sheriff, if he pleases, may let the defendant go without any sureties; but that is at his own peril: for, after once taking him, the sheriff is bound to keep him safely, so as to be forthcoming in court; otherwise an action lies against him for an escape. But, on the other hand, he is obliged, by statute 23 Hen. VI. c. 10, to take, (if it be tendered) a sufficient bail-bond: and by statute 12, Geo. I., c. 29, the sheriff shall take bail for no other sum than such as is sworn to by the plaintiff, and endorsed on the back of the writ.—3 Blac. Com. 290.

The defendant also, by his own act, may, in several ways discharge the bail to the officer. A mere appearance in court, and answering to the action will not be sufficient: but if he appears and surrenders himself in discharge of his bail, or the bail delivers him up in court in discharge of himself, this will be sufficient; and it will be the duty of the court to direct an entry of such surrender to be made on the record, which is the only evidence of the fact: and if the plaintiff intends to keep his hold upon the body, he must move to have the defendant taken into custody, which the court will order to be done, and commit him to jail, to be forthcoming to answer the execution. If the plaintiff should neglect to do this, the bail and the body are both discharged. So the defendant in like manner may be surrendered in court, in discharge of his bail, at any time before final judgment, and may, in like manner be committed to gaol: the defendant has no right to appear, defend, or plead, till he has given special bail with surety, to abide final judgment, if the plaintiff should require it. If, then, the plaintiff fails to make his motion for special bail, within due time, or accepts a plea without requiring special bail, he waives it, and the bail to the officer is discharged. So it is, if the defendant procures special bail to abide final judgment in the action, or if after final judgment is rendered against him, he surrenders himself to the officer, or is taken, or is openly and publicly about his business, so that he can be taken on the execution.—1 Swift's Dig. 596.

* Note.—But Lord Coke asserts that the word bail, is derived from an old Saxon term, signifying a safe-keeper or protector.—Com. on Litt. s. 79.
When the body of the defendant is attached, and being unable to procure bail, he is committed to prison, he has then a right to appear and defend in person or by attorney, and the acceptance of a plea by the plaintiff does not waive his claim for the imprisonment of his body. It is only in case of bail to the officer, that he is precluded from defending till he has given special bail. —1 Swift's Dig. 596.

Whenever a person is arrested and let to bail, he is considered as put into the custody of his bail, who thereby become his keepers instead of the sheriff, and are bound to have him before the court, to which the process is returnable, or in case of special bail, that he shall abide the final judgment of the court. In consequence of this, they have the control of his person, and may keep him in their own custody, or may permit him to go at large. When they permit him to go at large, they may retake him when they please, to deliver him to the officer, or to surrender him in court where he was bound to appear in case of bail to the officer, and to surrender him in court at any time before final judgment, in case of special bail, or to deliver him on the execution issued on the judgment recovered against him in the action, in which bail was given. There is no necessity of any warrant: it will be sufficient if they have an authenticated copy of the bail-bond, and of the proceedings in the action in which it was taken: if resisted, they may make use of the necessary force to accomplish the purpose; and may pursue and retake in any other State, as well as in this, and may depute a proper person for this purpose: for such would be a reasonable construction of their authority; otherwise the object of the law could easily be defeated. The bail may deliver the prisoner to the sheriff or officer, if he will consent to receive him and give up the bail-bond, but the sheriff may refuse and require them to perform the condition of the bond, and have him to appear in court. If the court, where the action is pending, is in session, they may surrender him in court, and the court will order the sheriff to take him into custody.—1 Swift's Dig. 597.

The party who has given a bail-bond may surrender himself to the officer before the return of the writ, and if the officer will receive him, and give up the bail-bond, it will be considered the same as if no such bail-bond had been given. In England, where the defendant is at large, he may come and render himself, or may be taken, and rendered by his bail, either in court, if sitting, or before a judge at his chambers, and the court or judge will make an entry of the render, and cause the defendant to be sent in custody of the tip-staff to prison. A lunatic confined in a hospital, may be brought into court by a writ of habeas corpus, and rendered in discharge of bail.—1 Swift's Dig. 597.

The difference between bail and mainprize is, that mainpennors are only surety; but bail is a custody; and therefore the bail may retake the prisoner, if they doubt he will fly, and detain him, and bring him before a justice, and the justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties.—Hale's Pleas, 96.

From and after the passage of this act, it shall and may be lawful for any agent, attorney in fact or at law, to hold to bail in all civil cases, and under the same rules and restrictions as are pointed out in the before recited acts on this subject. [The acts referred to are those of 1799 and 1820.]—Act of 1831; Prin. Dig. 472.

Note.—Judge Schley, in a note to the 15, 25 sections of the statute 4th Ann, which is, "An act for the amendment of the law, and the better advancement of justice," says, This section provides that sheriffs who have taken any bail-bonds for the appearance of defendants in any civil suit, shall assign them over to the plaintiffs at their costs, who may then maintain actions on them in their own names. Before the enactment of the statute of 12 Geo. 1. ch. 29, all personal actions were commenced with a capias, and the defendant was obliged to give bail for his appearance at the return of the writ; but the sheriff was not
obliged to bail a defendant taken on mesne process, unless he sue out a writ of mainprise; though he might have taken bail of his own accord.—1 Tid. Prac. 194. In order to remedy this evil and prevent such oppression, the statute of 23 Hen. VI. ch. 9, was passed, which compels sheriffs and gaolers to take bail for the appearance of the defendant, in a bond made payable to the sheriff by his name of office, and this was called bail to the sheriff, or bail below.

—ibid. Upon the appearance of the defendant the bail was discharged, and then the court, if it thought proper, could require the defendant to put in special bail, or bail above, or could discharge him on common bail.—1 Tid. Prac. 211. Bonds taken in pursuance of this statute of 23 Hen. VI. ch. 9, being made payable to the sheriff, could not be sued in the name of the party to whom payment they were really taken, and hence the above section of the act of 4 Ann. ch. 16, was passed, compelling sheriffs to assign such bonds to the plaintiff. But now in England by the 12 Geo. I. ch. 29, 5 Ruff. 590, above mentioned, a defendant cannot be held to special bail except upon affidavit of the amount due, and such amount endorsed on the back of the writ, and no person can be arrested in any civil suit except upon such affidavit made; but in all cases where no affidavit is made, a personal service of a copy of the process is sufficient, and if the defendant do not appear, the plaintiff may cause a common appearance to be entered for him.—1 Tid. Prac. 214, and thus stood the English law at the time of the settlement of Georgia.

But the common law as well as these statutes are all superseded and done away by the operation of our own statutes upon this subject. By the judiciary of 1700, Prim. Dig. 206, (420) all civil causes are to be commenced by petition to the court, and a process annexed by the clerk, and a copy of such petition and process served on the defendant or left at his most notorious place of abode twenty days before the return thereof, or the sitting of the court, is sufficient to compel him to appear and answer, or in default thereof, to authorize the court to proceed to judgment and execution. And by the same statute, Prim. Dig. 205, (441) if the plaintiff wish to hold the defendant to special bail (and there is no other bail known to our law) he can do so by making oath of the amount due, which affidavit being attached to the declaration, ("which affidavit shall be filed in the clerk's office, and copies thereof affixed to the original petition and process, and to the copy or copies thereof," Prim. Dig. 422,) and the amount endorsed on the back of the writ, the sheriff is bound to take bail in double the amount sworn to, in a bond with one or more sureties, and to return such bond with the petition and process to the court whence the process issued. This act does not say in whose name the bond shall be taken, but declares that all such bail shall be held and deemed special bail, and as such liable to the recovery of the plaintiff; and the mode of recovery, as pointed out by this act, is by seire facias to call in the bail, and not by an action of debt on the bond. It would seem to be most proper for the sheriff or other officer to make the bail-bond payable to the plaintiff, although if it be made payable to the sheriff, it could still be subject to the recovery of the plaintiff, and this by express words of the statute. Such bond is declared to be special bail, and is therefore not assignable, and can only be recovered by the plaintiff in the action, and by a writ of seire facias.—Sch. Dig. 329.

That when a debt is not due, and the debtor is about to remove, or is removing without the limits of this State, and oath being made by the creditor, his agent or attorney in fact or at law, of the amount of the debt to become due, and that the debtor is about to remove, or is removing without the limits of this State, and that he has reason to apprehend the loss of said debt, or some part thereof, if the debtor be not held to bail—it shall and may be lawful for the creditor to commence an action or suit at law, and hold said debtor to bail in the same way and manner, and under the same restrictions, as where an affidavit is made under existing laws, and the bail so taken shall in like manner be liable to the creditors, provided always that judgment shall not be rendered in any such cause until after the debt has become due.—Act of 1845; pamph. p. 37.

**Affidavit.**

**STATE OF GEORGIA,**

**Houston County.**

Personally appeared before me, James Mack, one of the Justices of the Peace, in and for said County, Solomon Screws, who being sworn, deposeth and saith, that Jacob Snuffers, of said County, is indebted to deponent, in the sum of one thousand dollars, principal, by Promissory Note not yet due, said Note bearing date the third day of February, eighteen hundred and forty-six; and to fall due on the first day of January, eighteen hun-
dred and forty-seven; the same being wholly unpaid; and that the
said Jacob Snuffers is about to remove [or is removing, as the case may
be] without the limits of said State; and deponent has reason to appreh-
end the loss of said debt, or some part thereof, if said Jacob Snuffers
be not held to bail.

Sworn to and subscribed,
before me, this May 1, 1846.  

James Mack, J. P.

SOLOMON SCREWS.

STATE OF GEORGIA,  

To the honorable Superior Court of said county.

The petition of Solomon Screws respectfully showeth, that Jacob
Snuffers of said county, is indebted to your petitioner in the sum of one
thousand dollars principal, by Promissory Note not yet due: for that
whereas, heretofore, to wit, on the third day of February, in the year of
our Lord, eighteen hundred and forty-six, the said Jacob made his certain
Promissory Note in writing, the date whereof is the day and year afore-
said, his own proper hand-writing being thereto subscribed, and then
and there delivered the same to your petitioner, and which is now here
in court to be shown: whereby, by the first day of January, next en-
suing the date of said Note, and of the commencement of this action,
he the said Jacob promised to pay your petitioner, or bearer, the said
sum of one thousand dollars, for value received; which Note remains
wholly unpaid. And whereas, the said Jacob is about to remove [or is
removing, as the case may be] without the limits of said State, and your
petitioner has reason to apprehend the loss of said debt, or some part
thereof, if the said Jacob be not held to bail. By reason whereof, and
by force of the statute, in such case, made and provided, an action
hath accrued to your petitioner in the premises against the said Jacob:
wherefore your petitioner brings suit and prays that process may issue,
requiring the said Jacob Snuffers personally, or by attorney, to be and
appear at the next Superior Court, to be held in and for said county,
then and there to answer your petitioner in an action on the Case, &c.

Simon Wake, Plff's Atty.

NOTE.—In the above form no breach is assigned, because none could be assigned, no breach
of the contract having been committed by the defendant. The note described is followed by
the allegation, that it is wholly unpaid, and also, by the allegation, that the defendant being
about to remove without the State, &c., and the plaintiff having reason to apprehend the loss of
the debt, or some part thereof, if the defendant be not held to bail, are stated with sufficient
certainty, it is believed. The gravamen of the action seems to be made up of the note, or debt
sued on; the fact that the defendant is about to remove, &c., and the reason of the plaintiff to
apprehend the loss of the debt, if the defendant be not held to bail. Query—must all this be
sustained by proof? If so, the Note will be proof of itself, unless denied on oath. Next in
order will come the proof, that defendant was about to remove, &c., and, lastly, the plaintiff's
reason to apprehend loss, &c., which last may, or may not, be inferred from the former, ac-
cording to circumstances. The Form submitted may be altered so as to meet the case of the
bearer of a Note not due. The usual endorsement in bail cases must be made on the writ.

From and after the passage of this act, all bonds taken in cases of bail in
this State, shall be taken payable to the plaintiff in the cause; any law

That it shall hereafter be lawful to issue and serve attachments and bail-
processes on the Sabbath-day, in the same manner and under the same rules,
regulations and restrictions as are now provided for the issuing and serving of
the same on other days: Provided, the person or persons applying for such
attachment or bail process, shall, in addition to the oath heretofore required
to be taken, swear that he apprehends the loss of his debt, or some part thereof, unless said attachment or bail process shall issue on the Sabbath-day.—*Act of 1834*; *Prin. Dig.* 474.

If any person except the attorney of record, shall acknowledge, or procure to be acknowledged, in any of the courts of this State, or before any authorised officer, any recognizance, bail, or judgment, in the name of any other person not privy or consenting thereto, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary for any period of time not less than one year, nor longer than four years.—*Prin. Dig.* 639.

13. In all cases where bail is requirable, and the plaintiff in any action shall require bail, such plaintiff shall make affidavit before any judge, justice of the inferior court, or justice of the peace within this State, or any judge or justice of a superior court of any one of the United States, shall have annexed thereto the seal of the State from whence it shall come, and a certificate of the governor, certifying that the person taking such affidavit is one of the judges or justices of a superior court of that State, of the amount claimed by him, and that he has reason to apprehend the loss of said sum, or some part thereof, if the defendant or defendants is or are not held to bail, which affidavit shall be filed in the clerk's office, and copies thereof affixed to the original petition and process, and to the copy or copies thereof, and the amount sworn to shall be endorsed on the petition and process.—*Act of 1799*; *Prin. Dig.* 422.

**Affidavit.**

*STATE OF GEORGIA,*  To me, *James Mack,* a justice of the peace in and for said county, personally came *John Doe,* of said county, who being duly sworn, deposeth and saith, that *Richard Roe,* of said county, is indebted to him in the sum of *five hundred dollars,* besides interest, by *promissory note,* and that deponent has reason to apprehend the loss of the said sum, or some part thereof, if the said *Richard Roe* is not held to bail.

Sworn to and subscribed, before me, this *May 1, 1846.*

*James Mack,* J. P.  

**JOHN DOE.**

Note.—If bail be applied for on the Sabbath-day, add to the above affidavit, "and deponent apprehends the loss of his debt, or some part thereof, unless said bail process shall issue on the Sabbath-day."

**Endorsement on the Writ.**

Sum sworn to, *five hundred dollars:* sheriff take good bail in the sum of *one thousand dollars.*  

*Simon Wake,* Pl't's Att'y.

14. When any civil process shall issue out of any of the said courts, whereby bail shall be required to be taken in manner aforesaid, of any person or persons to answer any action in any of the said courts, the *Sheriff or other officer* shall take a bond, with one or more sufficient security or securities, for double the sum sworn to, and shall return such bond, with the petition and process: And in case the sheriff or other officer shall fail or neglect to take such bail, or the bail taken shall be deemed insufficient by the court, on exceptions taken thereto, and entry thereof made at the first term to which the said petition and process shall be returned, such sheriff or other officer, and his, or their security or securities, in either of the said cases, shall be deemed and stand as special bail, and the plaintiff may proceed to judgment according to the provisions of the act hereinafter mentioned. And in all cases where any defend-
ant or defendants, of whom bail shall be required, shall refuse to give good and sufficient bail, it shall be the duty of such sheriff or other officer, to commit such defendant or defendants, to the common jail of the county, or if there should be no jail in the county, or the same shall be insufficient, it shall and may be lawful for the said sheriff or other officer, to confine such defendant or defendants in some private house: Nevertheless, such person or persons shall be allowed all the benefits of appearance and defence, as if he, she, or they, were personally present, and shall not be discharged out of custody; but by putting in bail, or by order of court.—Act of 1799; Prin. Dig. 422.

**Bail Bond.**

**STATE OF GEORGIA,**

Know all men, by these presents, that we, *Houston County.*

Richard Roe and Charles Smith, security, are held and firmly bound unto John Doe, in the sum of one thousand dollars, for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this first day of May, eighteen hundred and forty-six.

The condition of the above obligation is such that whereas, a civil process, requiring bail, at the suit of John Doe against said Richard Roe, in an action of Assumpsit, returnable to the Superior Court, for said county, on the fourth Monday in October next, hath been served upon the said Richard; now, if the said Richard, in case he is cast in the said suit, shall well and truly pay and satisfy the condemnation of the court, or render his body to prison, in execution of the same, in terms of the law, in such case made and provided, and upon failure thereof, the said Charles will do it for him, then the above obligation to be void; else, to remain in full force.

Tested and approved, by

Richard Roe, [L. S.]

Charles Smith, sec'y. [L. S.]

James Mack, J. P.

15. All bail taken according to the directions of this act, shall be deemed, held, and taken as special bail, and as such be liable to the recovery of the plaintiff; but the plaintiff, after final judgment, shall not take out execution against such bail, until a capias ad satisfaciendum shall be first issued thereon, and the principal cannot be found, and shall also issue a scire facias, returnable to the said court, which shall be served on the bail, at least twenty days before the return thereof; and after the return of such capias ad satisfaciendum against the principal, and scire facias against the bail, and judgment thereon, execution may issue against the principal and bail, or either of them, or either of their estates, unless the bail shall surrender the principal at, or before entering up final judgment on the said scire facias, either in open court in term time, or to the sheriff of the county in which such principal shall reside, at any time in vacation: And it shall be the duty of the court to order such principal into the custody of the sheriff, and the duty of the sheriff in time of vacation to receive into his custody such principal, and in either case to commit him, her, or them to jail, according to the directions of this act, any law, usage, or custom to the contrary notwithstanding.—Act of 1799; Prin. Dig. 423.

If a capias ad satisfaciendum is sued out, and a non est inventus is returned thereon, the plaintiff may sue out a process against the bail, if any were given, who, we may remember, stipulated in this triple alternative: that the defendant should, if condemned in the suit, satisfy the plaintiff his debt and costs; or, that he should surrender himself a prisoner; or, that they would pay it for him; as therefore the two former branches of the alternative are neither of
STATE OF GEORGIA,  
Houston County.  

Whereas, heretofore, to wit, at the April term of our Superior Court, eighteen hundred and forty-six, John Doe commenced his action of Assumpsit against Richard Roe, of said county, founded on a promissory note, for five hundred dollars, beside interest. And, whereas, said John Doe, at the time of commencing his said suit, filed his affidavit requiring bail, in conformity with the statute, in such case made and provided. And whereas, Charles Smith of said county, became the bail of said Richard Roe, by entering into bond, under his hand and seal, with said Richard Roe, which bond bears date the first day of April, eighteen hundred and forty-five, for the sum of one thousand dollars, conditioned as follows, to wit: "that whereas, a civil process, requiring bail, at the suit of John Doe against said Richard Roe, in an action of Assumpsit, returnable to the Superior Court for said county, on the fourth Monday in April next, (meaning the fourth Monday in April, eighteen hundred and forty-five:) hath been served on said Richard: now, if the said Richard, in case he be cast in the said suit, shall well and truly pay and satisfy the condemnation of the court, or render his body to prison, in execution of the same, in terms of the law, in such case made and provided, and upon failure thereof, the said Charles will do it for him, then the above obligation to be void; else to remain in full force," (which bond is here in court to be shown.) And, whereas, at the October term of said court, eighteen hundred and forty-five, a verdict was rendered in said action of Assumpsit, in favor of said John Doe, for the sum of five hundred dollars, besides interest and costs. And whereas, said Richard Roe has failed and neglected to satisfy the condemnation of the court in said action. And whereas, a writ of capias ad satisfaciendum from said judgment, issued against said Richard Roe, upon which writ of capias ad satisfaciendum, William Harriston, sheriff of said county, has made the entry of "the defendant not to be found in this county:" you are, therefore, hereby required, to make known to the said Richard Roe and Charles Smith, that they, and each of them, personally, or by attorney, be and appear, at our superior court, to be held in and for said county, on the fourth Monday in October next, then and there to show cause, if any they have, why judgment should not be rendered against them, on said bond, in favor of said John Doe, for the amount of principal, interest and costs, due on said judgment so rendered, as aforesaid.

Witness, the honorable Hugh Burns, one of the judges of the Superior Courts, this May 1, 1846.

James Holdfast, C'hk.
Bail pendente lite.

1. That in cases where an action is commenced and pending, or where
an action may hereafter be commenced, and no bail shall have been required
at the commencement of said action, or having been required, and has or may
be discharged, and the plaintiff in any such action pending the same shall re-
quire bail, such plaintiff shall make affidavit before any judge, justice of the
inferior court, or justice of the peace within this State; or any judge or just-
tice of a superior court of any one of the United States; shall have annexed
thereto the seal of the State from whence it shall come, and a certificate of
the Governor, certifying that the person taking such affidavit is one of the
judges or justices of a superior court of that State, of the amount claimed by
him, and that he has reason to apprehend the loss of the said sum, or some
part thereof, if the defendant or defendants is or are not, held to bail; which
affidavits shall be filed in the clerk's office of the court in which such action
is pending, and a copy or copies thereof affixed to the process to be issued by
the clerk of said court, in which such suit may be pending, and to the copy
or copies of such process, and the amount sworn to shall be endorsed on such
process and the copy or copies thereof.

Affidavit.

STATE OF GEORGIA; } Before me, James Mack, a justice of the peace,
Houston County. } in and for said county, personally came John Doe,
who being duly sworn, deposes and saith, that at the April term of
the Superior Court of said county, eighteen hundred and forty-six, de-
ponent commenced his action of Assumpsit against Richard Roe, of
said county, in which action of Assumpsit, deponent claims to be due
him, by said Richard Roe by note, the sum of five hundred dollars, be-
sides interest; and deponent further saith, that at the commencement
of said action, he did not require bail, (or did, and said bail has been
discharged, as the case may be;) and that deponent has reason to ap-
prehend the loss of the said sum, or some part thereof, if the said
Richard Roe is not held to bail.

Sworn to and subscribed, }
before me, this May 1, 1846.  
James Mack, J. P.  

JOHN ROE.

Process.

STATE OF GEORGIA—HOUSTON COUNTY.

To the Sheriff of said County—Greeting:

JOHN DOE } Assumpsit in the Superior Court.
RICHARD ROE.

Whereas, at the April term of the Superior Court, eighteen hun-
dred and forty-six, John Doe commenced his action of Assumpsit
against Richard Roe of said county, for the sum of five hundred dol-
ars, besides interest, on which action, at the commencement thereof,
said John Doe did not require bail, (or did, and said bail has been dis-
charged, as the case may be;) and whereas, said John Doe has filed in
office his affidavit, requiring bail, agreeably to the statute, in such
case made and provided: these are, therefore, to authorise and re-
quire you, to take bail of the said Richard Roe, in said action of As-
sumpsit, so pending as aforesaid, returnable to the next term of our
Superior Court, to be held on the fourth Monday in October next. Herein fail not, and have you at said court, this writ, with your actions and doings thereon.

Witness, the honorable Hugh Burns, one of the Judges of the Superior Courts, this May 1, 1846. James Holdfast, Cl'r.k.

Endorsement on the Process.

Sum sworn to, five hundred dollars; Sheriff take good bail in the sum of one thousand dollars. Simon Wake, Plff's Att’y.

2. When any such affidavit is made and filed in the clerk's office of the court, in which such suit is or may be pending, the clerk thereof shall immediately issue a process in the case with as many copies as there are defendants, annexing a copy of said affidavit to each process and copy process, and which process shall be made returnable to the next term of said court after the issuing of the same, and shall be executed and returned into court by the sheriff, his deputy, or other proper officer, and when so executed and returned shall be taken and considered a part of the record in said case.

3. When the said process, and copy affidavit, and copy process, shall issue as aforesaid, they shall be delivered to the sheriff or other proper officer, who shall be bound to execute the same at any time before the sitting of the court to which the said process may be made returnable, under the same directions and provisions as are pointed out in and by the said judiciary act, passed in the year 1799.

4. All and every defendant or defendants, when arrested by virtue of said process, shall be dealt with by the officer arresting him, her, or them, in the same manner as would have been done had such defendant or defendants been arrested at the commencement of said action on bail process; and shall be discharged from said arrest in no other manner than he, she, or they could, in case such arrest had been made on bail process at the commencement of said suit; and all bail taken according to the directions and under the provisions of this act, shall be held bound and liable in the same manner he, she, or they would have been bound and liable had he, she, or they become bail at the time of the commencement of said action; and the plaintiff or plaintiffs in said action shall be and are hereby authorised to proceed in the same manner against the defendant or defendants and bail, or either of them, as is pointed out in and by the said judiciary act, passed in the year 1799.

5. The defendant or defendants so held to bail, in manner heretofore pointed out in this act, shall not by reason thereof be entitled to any delay or continuance, but the case shall proceed to trial as though bail had been required and taken at the commencement of the case; and when there are more defendants than one in such suit, some of whom reside out of the county in which such suit is pending, a second original process and copy or copies may issue, returnable to the court in the county in which such suit or action is or may be pending, which, when served by the sheriff of the county where such defendant or defendants reside, or by other proper officer, the said defendant or defendants shall be subject and liable to the same provisions and restrictions, as he, she, or they would have been had the bail process issued at the commencement of said case.—Act of 1820; Prin. Dig. 444.

In any case where a defendant, who has given bail, and has final judgment obtained against him, is confined in any jail in this State, other than that of the county from whence the first process issued, the copias ad satisfaciendum against such defendant shall be considered as executed, so far as to release
the bail, when placed in the hands of the sheriff of the county where the said defendant is confined, and when the plaintiff or his attorney is notified of such confinement, and neglects to charge him with the said capias ad satisfaciendum, within a reasonable time, the same shall be considered as executed, so far as to release the bail, and the bail, on motion and proof thereof shall be discharged.—13th com. law rule.

Certificate of the Sheriff.

STATE OF GEORGIA,  
Macon County.  
I, Willis Green, sheriff of said county, do hereby certify, that I have, placed in my hands, a writ of capias ad satisfaciendum, issued from the Superior Court of Houston county, in favor of John Doe, against Richard Roe, for the sum of five hundred dollars, besides interest and costs. And I do further certify, that said Richard Roe is now confined in the common jail of the county first aforesaid, upon process, at the instance of Charles Wright, against said Richard Roe, this May 1, 1846.

Willis Green, Sh'ff, M. C.

Notice to the Plaintiff.

STATE OF GEORGIA,  
Houston County.  
To John Doe—You are hereby notified, that Richard Roe, against whom you have obtained judgment in the Superior Court of said county, for the sum of five hundred dollars, besides interest and costs, and for whom I am bail in said case, is now confined in the common jail of the county of Macon, in said State, this May 1, 1846.

Charles Smith.

2. When any person who is about to commence an action or suit at law, or in equity, for the recovery of negroes or other personal property, such person, his agent or attorney, shall make affidavit that he hath reason to apprehend that the said negroes or other personal property have been or will be elognaed, or removed away, or will not be forthcoming to answer the judgment, execution or decree that shall be made in the case; and shall also state on his affidavit the value of the same, and the amount of hire claimed, if any, and add, that he, she, or they do verily and bona fide claim the said negroes or other personal property, or some valuable interest therein, a copy of such affidavit shall be annexed to the petition, bill, or other process, and the original affidavit filed in the court whence such process issues; and it shall be the duty of the sheriff, his deputy, or other lawful officer serving such petition, bill, or other process, to take a recognizance, with good security, in double the amount sworn to, for the forthcoming of such negroes or other personal property, to answer such judgment, execution or decree as may be issued or rendered in the case; and such security shall be bound for the payment of the eventual condemnation money, and liable to execution in the same manner as securities upon appeals; and when such affidavit shall be made during the pendency of any process, a copy thereof, and of the process or subpoena, shall be served in like manner by the sheriff or his deputy, or other lawful officer, and the like security taken; and upon the defendant refusing to give such security, the property shall be seized and taken by the sheriff or other lawful officer, and delivered over to the plaintiff or complainant, his agent, or attorney, entering into a like recognizance, with security; and if such property is not produced or forthcoming to be seized and taken by such sheriff or other lawful officer, the defendant or defendants shall be committed to jail, to be kept in safe and close custody until the same is produced, or until he, she, or they shall enter security for the eventual condemnation money in the nature of security upon appeal.—Act of 1821; Prin. Dig. 450.
BAIL.

Writ in Trover.

STATE OF GEORGIA, \{ To the honorable Superior Court of said Houston County.

The petition of John Doe respectfully showeth, that Richard Roe, of said county, hath damaged your petitioner in the sum of one thousand dollars: for that, whereas, your petitioner, heretofore, to wit: in said county, on the first day of January, in the year of our Lord, one thousand eight hundred and forty-six, was lawfully possessed, as of his own property, of a certain negro fellow, named Jacob, of yellow complexion, twenty-five years of age, of great value, to wit: of the value of five hundred dollars; and of the yearly value, for hire, of one hundred dollars. And being so possessed thereof, your petitioner, afterwards, to wit, on the day and year first above mentioned, at Perry, in the county aforesaid, casually lost the said negro fellow, Jacob, out of his possession; and said negro fellow, Jacob, afterwards, to wit, on the day and year last aforesaid, at Perry, in the county aforesaid, came to the possession of the said Richard Roe, by finding. Yet, the said Richard Roe, well knowing the said negro fellow, Jacob, to be the property of your petitioner, and of right to belong and appertain to him, but contriving and fraudulently intending, craftily and subly, to deceive and defraud your petitioner, in this behalf, hath not as yet delivered said negro fellow, Jacob, to your petitioner, although often requested so to do, and hath hitherto wholly refused so to do; and afterwards, to wit, on the day and year first aforesaid, at Perry, in the county aforesaid, said Richard Roe converted and disposed of said negro fellow, Jacob, to his own use; to the damage of your petitioner, one thousand dollars; and therefore he brings his suit, and prays process may issue, requiring the said Richard Roe personally, or by attorney, to be and appear, at the next Superior Court to be held in and for said county, to answer your petitioner in an action of Trover, &c.

SIMON WAKE, Pl's Att'y.

Affidavit.

STATE OF GEORGIA, \{ In person appeared before me, James Mack, a Justice of the Peace in and for said county, John Doe, who being duly sworn, deposeth and saith, that he is about to commence (or has, as the case may be,) his action of Trover, in the Superior Court, of said county, against Richard Roe, of said county, returnable to the October term of said court, eighteen hundred and forty-six, for a certain negro fellow, named Jacob, of the value of five hundred dollars, and of the yearly value, for hire, of one hundred dollars; that deponent does, verily and bona fide, claim said negro-fellow, Jacob, as his right and property, (or some valuable interest in said negro fellow, Jacob, as the case may be), and that deponent hath reason to apprehend that the said negro fellow, Jacob, has been (or will be) eloigned, (or removed away, or) will not be forthcoming, to answer the judgment (execution, or decree) that shall be made in the case, unless said Richard Roe is required to enter into recognizance, agreeably to the statute in such case made and provided.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

JOHN DOE.
That while any suit, or action, is now pending, or may hereafter be instituted in any court of law or equity in this State, for personal property, the issue of said property born, or to be born, after the commencement of said suit, or action, shall and may be recovered in the said suit, or action; and it shall be the duty of the court to allow the declaration, or bill, to be amended at any stage of the said suit, or action, so as to include the said issue so born, or to be born; any law, usage, or practice to the contrary notwithstanding.—Act of 1827; Prin. Dig. 463.

A recognizance is an obligation of record, which a man enters into before some court of record, or magistrate, duly authorised, with condition to do some particular act: as to appear at the assizes, to keep the peace, to pay a debt, or the like. It is in most respects like another bond; the difference being chiefly this: that the bond is the creation of a fresh debt, or obligation, de novo,—the recognizance is an acknowledgment of a former debt upon record, the form whereof is, "That A doth acknowledge to owe to our lord the king, to the plaintiff, to C D, or the like, the sum of ten pounds," with condition to be void on performance of the thing stipulated; in which case the king, the plaintiff, C D, &c., is called the cognizee, "is cui cognoscitur," as he that enters into the recognizance is called the cognizor, "is qui cognoscit." This, being either certified to, or taken by the officer of some court, is witnessed only by the record of that court, and not by the party's seal; so that it is not in strict propriety a deed, though the effects of it are greater than a common obligation; being allowed a priority in point of payment, and binding the lands of the cognizor, from the time of the enrolment on record.—2 Blac. Com. 341.

**Recognizance.**

**STATE OF GEORGIA,**

Houston County.  

Be it remembered, that on the first day of May, 

in the year of our Lord, eighteen hundred and 

forty-six, we, Richard Roe and Charles Smith, security, both of said county, do acknowledge to owe to John Doe the sum of one thousand dollars, for the true payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated as above.

The condition of the above recognizance is such, that whereas said John Doe has commenced his action of Trover against said Richard Roe, returnable to the October term of the Superior Court, of said county, eighteen hundred and forty-six, for a certain negro fellow, named Jacob, of the value of five hundred dollars: now, should the said Richard Roe well and truly produce said negro fellow, Jacob, to answer such judgment, (execution, or decree) as may be issued, (or rendered) against him in the said action of Trover, and well and truly pay the eventual condemnation-money, recovered in said case, then this recognizance to be void; else, to remain in full force and virtue.

**Acknowledged, signed and sealed, before me.**  

James Mack, J. P.

Richard Roe. [L. S.]  

Charles Smith, sec'y. [L. S.]

1. From and immediately after the passing of this act, when a verdict for damages, shall be found, or rendered in favor of a plaintiff in trover, or trespass, and a judgment shall be signed thereon, the said verdict and judgment, shall not have the effect to change the property, which is the subject matter of the
said suit, or action, or to vest the same, or any part thereof, in the defendant or defendants, to the said suit, or action of trespass or trover, until after the damages and costs recovered by the plaintiff, in such action are paid off and discharged, except, so far as to subject the said property to be sold under and by virtue of an execution, issuing on said judgment, in said action of trespass, or trover, and to make the same liable to the payment of the damages and cost, recovered in said action.

2. No judgment obtained against the said defendant, to such suit or action, of trespass or trover, prior in point of time to the said judgment, so obtained by the said plaintiff, in such action of trespass or trover, shall have any lien, or binding force on the said property, which is the subject matter of such action of trespass or trover, until after the damages and costs recovered by such verdict, and judgment of the plaintiff, in such action of trespass or trover, are first paid off and discharged.—Act of 1830; Prin. Dig. 466.

Petition for bail in Actions ex Delicto.

STATE OF GEORGIA, Houston County. To the Honorable Hugh Burns, one of the Judges of the Superior Courts.

The petition of John Doe respectfully showeth, that he has commenced his action of Trespass vi et armis, in the Superior Court, of said county, returnable to the October term of said Court, eighteen hundred and forty-six, against Richard Roe of said county; in which action, your petitioner claims from said Richard Roe, for divers trespasses in his writ mentioned and set forth, committed against and upon your petitioner personally by said Richard Roe in said county, on the tenth day of April last past, (when your petitioner was beaten with a stick by said Richard Roe,) the sum of five hundred dollars. And your petitioner avers, that said Richard Roe is actually removing beyond the jurisdictional limits of this State; and that, therein, he has reason to apprehend loss of said sum, or some part thereof, if the defendant is not held to bail; therefore, your petitioner prays your honor, to issue an order requiring the said Richard Roe, to give bail in said action so commenced, as aforesaid, and your petitioner, as in duty bound, &c.

Simon Wake, Pluf's Attorney.

In person, appeared before me, James Mack, a Justice of the Peace, in and for said county, John Doe, who maketh oath and saith, that the facts stated in the foregoing petition, are just and true in substance and effect.

Sworn to and subscribed, before me, this May 1, 1846. James Mack, J. P.

John Doe.

Order.

STATE OF GEORGIA.—In Chambers, May 1, 1846.

To the Clerk of the Superior Court of Houston County.

Whereas, John Doe, by his petition, supported by affidavit, showeth that he has commenced his action of Trespass vi et armis, in the Superior Court of Houston county, against Richard Roe, returnable to the October term of said court, eighteen hundred and forty-six, in which
action the plaintiff claims from the defendant, the sum of five hundred dollars; and that said Richard Roe is actually removing beyond the jurisdictional limits of this State; and that, thereby, he has reason to apprehend the loss of said sum, or some part thereof, if the defendant is not held to bail: you are, therefore, hereby directed and required, to attach to said writ, the process usual, in cases of contract, requiring bail in the sum of one thousand dollars, upon said plaintiff filing in your office, his petition and affidavit. Herein fail not.

Given under my hand and official signature.

Hugh Burns, J. S. C.

Sheriff’s Acknowledgment.

STATE OF GEORGIA, | I hereby acknowledge to have received from
Houston County. | Charles Smith, the body of Richard Roe, for whom said Charles Smith is bail, in a case pending in the Superior Court of said county, for the sum of five hundred dollars, in which case John Doe is plaintiff, returnable to the October term of said court, eighteen hundred and forty-six, in discharge of the bail-bond of the said Charles Smith; this May 1, 1846.

William Harriston, Sheriff.

Note.—The Compiler would here remark, that the above acknowledgment of the sheriff, authorises the bail to apply to the Court for an exoneretur to be entered on its minutes. The bail may surrender his principal in vacation or in term time; in the former case the sheriff should give an acknowledgment, in the latter, the surrender is entered on the minutes.

Exoneretur.

John Doe vs. Richard Roe.

On reading and filing the Acknowledgment of the Sheriff, of the surrender to him of the defendant in this cause, by Charles Smith, his bail, in his discharge; it is ordered that the said Smith be exonerated from his said obligation, and that an Exoneretur be entered on said bond.

(Another Form.) The Defendant in this cause having been surrendered into the custody of the Sheriff by Charles Smith, his bail, here in Court, it is ordered, &c.
CHAPTER VIII.

ILLEGALITY OF EXECUTION.

32. In all cases where execution shall issue illegally, and the person against whom such execution may be, shall make oath thereof, and shall state the causes of such illegality, such sheriff shall return the same to the next term of the court out of which the same issued, which court shall determine thereon at such term.—Act of 1799; Prin. Dig. 427.

That from and immediately after the passage of this act, when any person against whom an execution shall issue illegally, shall make oath thereof, and shall state the causes of such illegality, the sheriff shall return the same to the next term of the court from which such execution issued: Provided, That the person alleging such illegality, shall also deliver to the sheriff, or other lawful officer, a bond with good and sufficient security conditioned for the delivery of the property levied on, at the time and place of sale, in the event of the causes or grounds of the alleged illegality being overruled by the court, and not otherwise; and in all cases it shall be the duty of the sheriff, or other officers, to levy on property, where any can be found, before receiving such affidavit.—Act of 1838; pamp. p. 145.

That when any affidavit of illegality shall be filed in terms of the law, for the purpose of staying proceedings when an execution is levied on property, the property so levied on shall be subject to levy and sale under other executions, and the officer making the first levy shall claim, receive, hold and retain, such an amount of the proceeds of sale as the court shall deem sufficient to pay the execution first levied, including interest up to the time of the court at which said illegality shall be determined—and any bond given by the defendant on filing such affidavit, shall be released and discharged, so far as relates to the property sold.—Act of 1845; pamp. p. 39.

STATE OF GEORGIA,

Know all men by these presents, that we, Richard Roe and Charles Smith, security, of said county, are held and firmly bound to William Harriston, Sheriff of said county, in the sum of one thousand dollars; for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, William Harriston, sheriff of said county, has levied a fi. fa. issued from the Superior Court of said county, in favor of John Doe against Richard Roe, for the sum of five hundred dollars, upon a certain negro fellow named Jacob, of yellow complexion, about twenty-five years of age. And whereas, said Richard Roe has filed his affidavit of illegality to
said fi. fa.: now, should said Richard Roe, well and truly deliver said negro fellow, Jacob, to said William Harriston, sheriff, at the time and place of sale, in the event of the causes or grounds of the alleged illegality being overruled by the Court, then the above bond to be null and void: otherwise to remain in full force and virtue.

Tested and approved, by Richard Roe. [L. S.]

James Mack, J. P. Charles Smith, sec'ty. [L. S.]

When an affidavit of illegality is made on account of partial payment made on the execution, the defendant at the time of making such affidavit must pay up the amount he admits to be due, or the sheriff shall proceed to raise that amount and accept the affidavit for the balance.—43d com. law rule.

No second affidavit of illegality shall be received by any sheriff or other officer.—44th com. law rule.

Affidavit of Illegality.

STATE OF GEORGIA—HOUSTON COUNTY.

JOHN DOE vs. Richard Roe. 

Fi. fa. from the Superior Court, $500 principal debt, &c.

Before me, James Mack, a Justice of the Peace, in and for said county, in person, came Richard Roe, who being duly sworn, deposes and saith, that he is advised and believes, that the above stated fi. fa. is proceeding illegally against him, deponent, on the following grounds, to wit:

Firstly. Because, &c.

Secondly. Because, &c.

Sworn to and subscribed, before me, this May 1, 1846. 

James Mack, J. P.

RICHARD ROE.

Issue formed on Illegality.

And now, at this term, comes the plaintiff in execution, by Simon Wake, his attorney, and denies the payments referred to in the defendant’s affidavit of illegality, and says, that in truth and in fact, the defendant has made no payments which should be allowed on said fi. fa., and is not entitled to have any credits made upon said fi. fa., but that said fi. fa. is open for the full amount thereof; and this the said plaintiff prays may be inquired of by the county, &c.

Simon Wake, Plff’s Att’y.

And the defendant in execution, by Thomas Webb, his attorney, doth the like, &c.

Thomas Webb, Def’t’s. Att’y.

Verdict.

We, the jury, find the issue in favor of the plaintiff in execution.

James Long, Foreman.

Judgment.

JOHN DOE vs. Richard Roe.

Fi. fa. and issue joined on illegality.

The above issue having been tried, at the present term of the court, and the jury having returned a verdict upon said issue, in favor of the plaintiff in execution, it is, therefore, on motion of the plaintiff’s
attorney, considered by the court, that the illegality filed in said case, be overruled and dismissed; and it is ordered that the fl. ft. proceed. And it is further considered by said court, that said plaintiff do recover against said defendant, ten dollars and fifty cents for his costs and charges by him, in and about his defence against said affidavit, expended. Judgment signed this first day of May, 1846.

Simon Wake, Pl't's Att'y.

CHAPTER IX.

CLAIM.

1. In all cases where a levy is made on property which is claimed by a third person, and good and sufficient security is tendered by the party claiming the same, it shall be the duty of such sheriff, constable, or coroner, to take security for treble the amount of the debt, on which such execution is founded, for delivery of the property so levied on at the time of sale, (provided, the property so levied on should be found subject to such execution,) then and in that case, it shall be the duty of the sheriff, coroner, or constable, to leave the same in the possession of such claimant, and in case the said claimant or security shall fail to deliver the property at the time and place of sale agreeably to such bond, it shall be the duty of the officer taking the same to transfer such bond to the plaintiff in execution, and said bond shall be recoverable in any court of law or equity in this State, having cognizance thereof.—Act of 1811; Prin. Dig. 438.

1. That when any sheriff or coroner shall levy an execution on property claimed by any person not a party to said execution, such person shall make oath to said property, and it shall be the duty of such sheriff or coroner, to postpone the sale or future execution of the judgment, until the next term of the court from whence said execution issued: Provided, the said execution is or should be levied on personal property; but should said execution be levied on real property, and the same should be claimed in manner aforesaid; then and in that case it shall be the duty of the officer making the levy upon real property to report the same, together with the execution and claim, to the next term of the Superior Court of the county in which the land so levied on shall lie; and the court to which such claim shall be reported, shall cause the right of property to be decided on by a jury at the first term, unless special cause be shown to induce said court to continue the case for one term, and no longer: Provided, the person claiming such property, or his agent or attorney, shall give bond to the sheriff or coroner, as the case may be, with good and sufficient security, in a sum equal to double the amount of the property levied on, at a reasonable valuation, to be judged of by the levying officer, conditioned to pay the plaintiff all damages, which the jury on the trial of the right of property may assess against him, in case it should appear that said claim was made for the purposes of delay; and every juror on the trial of the claim of property, either real or personal, shall be sworn, in addition to the
oath usually administered, to give such damages, not less than ten per cent., as may seem reasonable and just to the plaintiff against the claimant, in case it shall be sufficiently shown that said claim was made for delay only; and it shall be lawful for such jury to give verdict in manner aforesaid, by virtue whereof judgment may be entered up against such claimant and his security or securities for the damages so assessed by the jury, and the costs of the trial of the right of property.  And provided also, that the burden of proof shall lie upon the plaintiff in execution in cases where the property levied on is, at the time of such levy, not in the possession of the defendant in execution.

Affidavit.

STATE OF GEORGIA, } Before me, James Mack, a Justice of the Peace,
Houston County. } in and for said county, in person came Scott Ross, who being duly sworn, deposes and saith, that a certain negro fellow, named Jacob, of yellow complexion, twenty-five years of age, who has been levied on by William Harriston, Sheriff of said county, by virtue of a writ of fieri facias, issued from the Superior Court of said county, in favor of John Doe against Richard Roe, as the property of said Richard Roe, is not the property of said Richard Roe, but is the property of deponent.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

Scott Ross.

Damage Bond.

STATE OF GEORGIA, } Know all men by these presents, that we,
Houston County. } Scott Ross and Charles Smith, security, both of said county, are held and firmly bound, unto William Harriston, Sheriff of said county, in the just and full sum of one thousand dollars, for the true payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, said William Harriston, Sheriff of said county, has levied a writ of fieri facias, issued from the Superior Court of said county, in favor of John Doe against Richard Roe, on a certain negro fellow, named Jacob, of yellow complexion, twenty-five years of age, which negro fellow has been claimed by said Scott Ross as his property: now, should said Scott Ross, well and truly, pay said John Doe, plaintiff in execution, all damages which the jury, on the trial of the right of property, may assess against him, in case it should appear that said claim was made for the purposes of delay; then the above obligation to be null and void, else to remain in full force and virtue.

Tested and approved, by Scott Ross. [L. S.]

James Mack, J. P. Charles Smith, Sec'y. [L. S.]

2. Whenever such claim of property may be made in terms of this act, the person claiming property levied on and returned to the proper court, by said sheriff, or coroner, shall not be permitted to withdraw or discontinue his said claim more than once, without consent and approbation of the plaintiff in execution, or some person duly authorized to represent such plaintiff; but said court shall proceed to the trial of said claim of property in manner aforesaid, and it shall be the duty of the jury to award damages accordingly. And
provided further, that either party who may be dissatisfied with the verdict of said jury, may enter his, her, or their appeal to a special jury, in the superior court of the county where said trial shall have been had, which appeal shall be subject to the same rules and regulations as govern in appeals in ordinary cases.—Act of 1821; Prin. Dig. 448.

That in all cases of claim, whether the levy be made under attachment or execution, the amount of any bond given for the forthcoming of the property levied on shall be in double the value of such property, to be estimated by the levying officer; and all such bonds shall be made payable to the plaintiff in attachment, or execution, who may sue and recover on the same upon breach of the condition thereof.—Act of 1841; pamp. p. 128.

Forthcoming Bond under Claim.

STATE OF GEORGIA, } Know all men by these presents, that we,  
Houston County. } Scott Ross and Charles Smith, security, both of  
said county, are held and firmly bound unto John Doe, plaintiff in execu-  
ction, in the just and full sum of one thousand dollars, for the true  
payment of which we bind ourselves, our heirs, executors and admin-  
istrators, jointly and severally, firmly by these presents: sealed with  
our seals, and dated this May 1, 1846.

The condition of the above obligation is such, that whereas William  
Harriston, Sheriff of said county, having levied a fi. fa. issued from the  
Superior Court of said county, in favor of John Doe against Richard  
Roe, on a certain negro fellow, named Jacob, of yellow complexion,  
twenty-five years of age, as the property of said Richard Roe, which  
negro fellow has been claimed by said Scott Ross as his property: now,  
should the said Scott Ross well and truly deliver said negro fellow,  
Jacob, so levied on, as aforesaid, at the time of sale, (provided said  
negro fellow, Jacob, should be found subject to said execution,) then  
the above obligation to be null and void; else, to remain in full force  
and virtue.

Tested and approved, by  
James Mack, J. P.  

Scott Ross. [L. S.]  
Charles Smith, Sec'y. [L. S.]

That upon the levy of any execution hereafter to be made upon any prop-  
erty, whether real or personal, it shall be lawful for any person or persons  
desiring to claim the same, to do so by him, her, or themselves, his, her, or  
their agent or attorney, in the same manner, and under the same restrictions,  
as are provided for the issuing of attachment.—Act of 1839; pamp. p. 139.

In all cases of claims, as the burden of proof rests with the plaintiff in execu-  
tion, he is entitled to the conclusion; but if the claimant introduces no evi-  
dence, he shall have the conclusion, and the plaintiff in execution shall in  
every case pay the jury fee; and in cases of illegality, the plaintiff in execu-  
tion shall in like manner pay the jury fee, and conclude.—16th com. law rule.

In cases of claims, when either the plaintiff in execution or the claimant  
dies, pending the claim, their representatives may be made parties on motion,  
and on producing letters testamentary or of administration.—17th com. law  
rule.

When a claim case is called, in its order, for trial, an issue must be tendered  
within five minutes, or the levy will be dismissed, and no exceptions will be  
allowed to the bond or affidavit in case of claims or attachments after issue
CLAIM.

joined, except such as are taken in writing at or before the joining such issue.—18th com. law rule.

The affirmation by one party, and denial by the other, is termed in law, making up or joining the issue. And an issue in pleading is defined to be "a single, certain, and material point issuing out of the allegations of the parties to a suit, and consisting regularly of an affirmative and negative. The word issue, (exitus,) in the sense in which it is applied in pleading, signifies end, termination, or conclusion, and is thus applied because an issue brings the pleadings on record to a close."—Co. Lit. 126; 3 Blac. Com. 314; Gould's Plead. 302; 1 Swift's Dig. 635.

Issue.

And now, at this term, comes John Doe, plaintiff in execution, by his attorney, Simon Wake, and saith, that the negro fellow, Jacob, who has been levied on as the property of Richard Roe, and claimed by Scott Ross as his property, is the property of said Richard Roe, defendant in execution; and that said negro fellow, Jacob, is subject to satisfy the execution levied on him, in favor of said plaintiff; and this he prays may be inquired of by the country, &c.

Simon Wake, Pl's Att'y.

And the claimant, by his attorney Thomas Webb, doth the like, and saith that said negro fellow, Jacob, is not subject to said execution, &c.

Thomas Webb, Clm't's Att'y.

Note.—The Compiler asks leave to notice here, for the benefit of such of his readers as may not have made the law their study, that the expression, "and of this he puts himself upon the country," (et de hoc ponit se super patriam), has a technical signification, and implies nothing more than that the party rests the fate of his cause upon the truth of his averment, and consents that the question, as to its truth, shall be determined by a jury. Thus, in the issue, the plaintiff avers that the property levied upon is subject to his execution; the claimant says it is not subject to the execution. Of this both parties put themselves upon the country, that is, upon the jury, who, by their verdict, say whether the property is subject or not; which verdict ends the controversy, and binds all parties to the suit, or such as are privy thereto. These remarks will equally apply to the other issues supposed, in the course of these entries.

Verdict.

We, the jury, find the property subject to the execution; and we further find ten per cent. damages, upon the whole amount of the execution, against the claimant, for a frivolous claim, and the costs of suit.

John Simms, Foreman.

Judgment.

Whereupon, it is considered by the Court that said fellow Jacob, the property levied on, is subject to the fl. fa. levied on him, and that the sheriff proceed to collect the amount of said fl. fa. by a sale of the condemned property. Judgment signed, this May 1, 1846.

Judgment against the Claimant and his Security.

Whereupon, it is considered by the Court that the Plaintiff in fl. fa. do recover against the claimant and his security Charles Smith, the sum of fifty dollars, for his damages, and the sum of fifteen dollars, for his costs and charges, in this behalf expended; and the defendant in fl. fa. and his security, in mercy, &c. Judgment signed, this May 1, 1846.
RULE AND ATTACHMENT.

That from and immediately after the passage of this act, upon claims of property now pending or which may be hereafter pending in the superior or inferior courts of this State, where damages shall be found by jury, the said damages shall be assessed upon the whole amount then due upon the execution levied; provided, the value of the property in dispute exceeds the amount of said execution, and upon the value of the property claimed when the same is less than the amount of the execution levied; any law, usage, or custom to the contrary notwithstanding.—Act of 1829; Prin. Dig. 464.

In all cases where a writ of execution from a justice's court shall have been levied on one or more slaves, and a claim to such slaves shall have been interposed according to the laws in force for the time being, such execution and claim shall be returned to the next term of the superior or inferior court, whichever may first happen, of the county in which such execution was issued, and shall be there tried in the same manner as other claims which by law are or shall be returnable to those courts respectively.—Act of 1824; Prin. Dig. 460.

CHAPTER X.

RULE AND ATTACHMENT.

1. That from and immediately after the passage of this act, that whenever a rule absolute shall be obtained against any sheriff, coroner, justice of the peace, constable, clerk of the superior or inferior court, or attorney at law, for the payment of money when such money shall not be promptly paid, that such demand shall thereafter draw an interest at the rate of twenty per cent. per annum.

2. That all deputy sheriffs shall be liable to be ruled and attached in the same way and manner as sheriffs; but the liability of the sheriff shall not be affected by any such proceeding against his deputy where the same is not effective.

3. That it shall be lawful for the judges of the superior courts of this State, justices of the inferior court, and justices of the peace, upon application, to grant rules nisi against all officers in vacation, which may be served as heretofore practiced.—Act of 1841; pamp. p. 124.

That whenever a sheriff of any county in this State absents himself from his court, that the presiding judge or judges, in all such instances, when required by plaintiffs in executions or their attorney, shall grant rules absolute against said sheriff, unless it is proven, at said term of the court, that the sheriff, from sickness, is not able to attend said court, any law or custom to the contrary.—Act of 1841; pamp. p. 122.

Rule Nisi.

JOHN DOE, vs. RICHARD ROE. { Fi. fa. from the Superior Court of Houston county $500 principal, besides interest and costs.

On motion of counsel in behalf of the Plaintiff in this cause, it is ordered, that the Sheriff return the fieri facias in said cause, and show
cause, on to-morrow morning, or as soon thereafter as counsel can be heard, (or instanter) why he shall not pay to the Plaintiff’s Attorney, the principal, interest and costs, due on said fi. fa.

Simon Wake, Pl’ff’s Att’y.

May 1, 1846. Served William Harriston, Sheriff, with a copy of the above rule.

Sheriff’s Answer.

John Doe

Richard Roe

In answer to the rule nisi, granted in the above stated case, calling upon this respondent to produce said fi. fa. in court, with his acts and doings thereon; and to show cause why he should not be required to pay the amount due on said fi. fa. to the plaintiff’s attorney, the respondent saith, [here state, fully and at large, the sheriff’s excuse.] All which, is respectfully submitted; this May 1, 1846.

William Harriston, Sh’ff.

Rule Absolute.

John Doe

Richard Roe

The cause shown by the Sheriff, in answer to the rule nisi served upon him, in the above cause, being considered by the court insufficient, it is therefore, on motion, ordered, that the said rule be made absolute, and that said William Harriston, Sheriff, pay over to the plaintiff’s attorney, instanter, the amount of principal, interest and costs due on said fi. fa.; this May 1, 1846.

Simon Wake, Pl’ff’s Att’y.

Rule Nisi for Attachment.

John Doe

Richard Roe

A rule absolute in the above case having been granted by the court, requiring William Harriston, sheriff, to pay over to the plaintiff’s attorney, the principal, interest and costs, due on the above stated fi. fa. and it being represented to the court, that said sheriff neglects and refuses to comply with the requirements of said rule absolute, it is, on motion, ordered that said sheriff show cause, instanter, if any he has, why an Attachment, for contempt, should not be issued against him.

Simon Wake, Pl’ff’s Att’y.

May 1, 1846. Served William Harriston sheriff, with a copy of the above rule.

Simon Wake, Pl’ff’s Att’y.

Sheriff’s Answer.

John Doe

Richard Roe

In answer to the above rule nisi for Attachment, the respondent being personally in court, admits that he has nothing further to add, to what has been already respectfully submitted.

William Harriston, Sh’ff.
RULE AND ATTACHMENT.

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4. That whenever the sheriff or his deputy is a party to said rule, or interested therein, and there be no coroner or other lawful officer of said county to execute the same, it shall be the duty of the judge or justice, or justices of said court to appoint, pro tempore, a special officer to carry out and effectuate the order of said court, which said officer, so appointed, shall be allowed the usual fees of sheriffs for like service.—Act of 1841; pamp. p. 124.

JOHN DOE vs. RICHARD ROE.

STATE OF GEORGIA, Houston County.

} Attachment.

To Nathan G. Hutto, Coroner, of said county.

The cause shown by the sheriff, in answer to the rule nisi served upon him, in the above case, being considered by the court insufficient: therefore, you are hereby commanded and required forthwith, to arrest William Harriston, sheriff, and him imprison in the common jail of Twiggs county without bail or mainprize until he shall pay to Simon Wake, plaintiff’s attorney, the sum of five hundred dollars, for his principal debt, the sum of fifty dollars, for his interest up to this date; the sum of fifteen dollars for his costs, and all other costs and charges incidental to the issuing this Attachment, the arrest, imprisonment and discharge of said William Harriston, sheriff, as aforesaid; or, until said sheriff shall be otherwise delivered from his said imprisonment, by due course of law. Herein fail not, and have you, at your said court, to be held in and for said county, on the fourth Monday in October next, this writ, with your acts and doings thereon.

Witness, the honorable Hugh Burns, judge of said Court, this May 1, 1846.

A true extract from the Minutes of said Court.

JAMES HOLDFAST, Clk.

Coroner’s Return.

STATE OF GEORGIA, Houston County.

Body of William Harriston, Sheriff, of said county, whose body I have now confined in the common jail of Twiggs county.

NATHAN G. HUTTO, COR’R.

Attorney’s Receipt.

JOHN DOE vs. RICHARD ROE.

Attachment against William Harriston, Sheriff. Principal, $500; interest, $50; costs, $25.

Received, May 1, 1846, of William Harriston, Sheriff of Houston county, the full amount of principal, interest and costs, due on the above stated Attachment.

SIMON WAKE, Plff’s Att’y.

Judge’s Order.

STATE OF GEORGIA—In Chambers, May 1, 1846.

To the Coroner of Houston County.

JOHN DOE vs. RICHARD ROE.

Attachment against William Harriston, Sheriff. Principal, $500; interest, $50; costs, $25.

It appearing, by the receipt of Simon Wake, plaintiff’s attorney, in
the above stated case, dated this day, that William Harriston, Sheriff, who is now confined in the common jail of Twiggs county, by virtue of an Attachment, for contempt, in neglecting to pay over the amount of the judgment and fi. fa. in favor of the plaintiff; that said William Harriston, Sheriff, has purged himself from his said contempt, by paying over the sum due the plaintiff; it is, therefore, on motion, ordered, that said Attachment be discharged, and that said Sheriff be liberated from his imprisonment forthwith.

Given under my hand and official signature.

Hugh Burns, J. S. C.

CHAPTER XI.

CHANCERY.

An Act declaratory of the fifty-third section of an Act, entitled an Act to amend an Act entitled an Act to revise and amend the judiciary of this State, passed 16th of February, 1799.

Whereas, the said recited section is in the words following, to wit: that the superior courts in the several counties shall exercise the powers of a Court of Equity, in all cases where a common law remedy is not adequate to compel parties in any cause to discover on oath all requisite points necessary to the investigation of truth and justice, to discover transactions between co-partners and co-executors, to compel distribution of intestate estates, and payment of legacies, to discover fraudulent transactions for the benefit of creditors, and the proceedings in all such cases shall be by bill, and such other proceedings as are usual in such cases, until the setting down of the cause for trial; and the courts shall order the proceedings in such manner as that the same shall be ready for trial at furthest at the third term from the filing such bill inclusive, unless very special cause be shown to induce the court to continue the same, which shall not extend to more than four terms; and all such bills shall be read and sanctioned by one of the judges, and a copy thereof served on the opposite party at least thirty days before the filing of such bill in court; and the party against whom such bill shall be filed, shall appear and answer to the same at the next court; and if he, she, or they shall fail to do so, the facts in the said bill shall be taken pro confesso, and the court may proceed as to justice shall appertain; [and see Sch. Dig. 368] and whereas, under the construction of the said recited sections, the equity side of the court has drawn to itself exclusively all cognizance of the cases in said section enumerated, even when such cases depend upon aliunde proof, to the manifest embarrassment of justice in many cases, to the injury of the good citizens of this State; for remedy whereof,
1. Be it enacted, That from and after the passing of this act, whenever any of the cases enumerated in the before-recited section, a plaintiff or complainant shall conceive that he, she, or they can establish his, her, or their claim, without resorting to the conscience of the defendant, it shall and may be lawful for every such plaintiff or complainant to institute his, her, or their action upon the common-law side of the court, and shall not be held to proceed with the forms of equity; any law or usage to the contrary notwithstanding.

2. All parties in any of the cases mentioned in the before-recited section, after the commencement of the action at common law, may, during the progress of said suit, file his, her, or their bill for the discovery of testimony in aid or defence of his, her, or their common-law action, in all cases where the same may be necessary.—Act of 1820; Prin. Dig. 447.

So much of the above-recited act (Act of 1799) as requires the judges of the superior courts, or one of them, to read and sanction bills in equity other than bills of injunction, ne exeat and quia timet, before the filing of said bills in court, shall be, and the same are hereby repealed.—Act of 1827; Prin. Dig. 462.

3. No injunction shall be sanctioned or granted by any judge of the superior courts of this State, until the party requiring the same shall have previously given to the party against whom such injunction is to operate, by application to the clerk of the superior court for that purpose, a bond with good and ample security for the eventual condemnation money, together with all future costs; which said bond shall be lodged in said clerk's office, subject to the order of the court, and have paid all costs which may have accrued in the case, the subject of the injunction.—Act of 1811; Prin. Dig. 437.

1. That from and after the passing of this act, the third section of the above-recited act, (the above section) be so altered and amended as to authorise the judges of the superior courts of this State, to grant injunctions, upon such security and under such terms, as in their discretion such case may require.
—Act of 1842; pamph. p. 38.

Injunction Bond.

STATE OF GEORGIA,}  
Houston County.}  
Know all men, by these presents, that we, John Doe and Charles Smith, security, are held and firmly bound unto Richard Roe, in the sum of one thousand dollars, good and lawful money of this State, for the faithful payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, the above bound John Doe is about applying to the honorable Walter Means, one of the judges of the Superior Courts, for the State's writ of Injunction to issue, to restrain the further prosecution of an action of Assumpsit pending in the Superior Court of said county, instituted by said Richard Roe against said John Doe, until the coming in of the answer of the said Richard Roe, to the bill of discovery and Injunction of said John Doe: now should the said John Doe, well and truly pay said Richard Roe the eventual condemnation money, which may be recovered against him, in said action of Assumpsit, together with all future costs, then the above obligation to be void; else to remain in full force and virtue.

Tested and approved, by John Doe. [L. S.]
James Holdfast. C. S. C. Cha's Smith, Sec'y. [L. S.]
CHANCERY.

Clerk's Certificate.

STATE OF GEORGIA—HOUSTON COUNTY.

Clerk's Office, Superior Court, May 1, 1846.

This is to certify, that John Doe has deposited in my office, bond, with good and ample security, for the payment of the eventual condemnation money, and all future costs, preparatory to application for the States' writ of Injunction, to operate in an action of Assumpsit instituted in said court by Richard Roe, against said John Doe; and that said John Doe has paid all costs which have heretofore accrued in said case; in conformity to the statute in case of application for Injunction, made and provided.

Given under my hand and official signature.

JAMES HOLDFAST, C'I'k.

4. Where any doubt arises as to the sufficiency of the security tendered to any of the persons, authorised by this act to take the same, the party so authorised to take the said security, may compel the party to justify upon oath, and such justification upon oath shall amount to such sufficiency as to exonerate the party taking the security, from any liability.

Security's Affidavit.

STATE OF GEORGIA. } In person appeared before me, Charles Smith, who tenders himself as the security of John Doe, who is about to apply to the honorable Walter Means, one of the judges of the Superior Court, for the State's writ of Injunction, to operate against Richard Roe, who has instituted his action of Assumpsit against said John Doe, in the Superior Court of said county; who being duly sworn, deposeth and saith, that he is worth the sum of one thousand dollars, over and above all his liabilities.

Sworn to and subscribed, before me, this May 1, 1846.

James Holdfast, C. S. C.

5. No judge of the superior court shall grant or sanction any certiorari or injunction out of his judicial district, unless there shall be a vacancy in any of the other districts, or the judge thereof be so indisposed, or be absent therefrom, so that the business of granting certioraries and injunctions cannot be speedily done: Provided, no certiorari shall be granted, to remove any proceedings from a magistrate's court, until it has been tried by a jury in said court.

That so much of the 5th section of an act passed on the 16th day of December, in the year 1811, (the above section) as relates to certioraries, be, and the same is hereby repealed.—Act of 1821; Dav. Com. 206.

6. In all cases of bills of injunction where the defendant or defendants reside out of the State, a service on the attorney of the plaintiff in the original action, and a publication of a six months' rule obtained from the judge granting the injunction, shall be deemed a sufficient service.

7. All bills of injunction granted by the superior court, or any of them, or which may hereafter be granted, shall stand and be considered as open for argument and amendment, at the first term of the superior court which may be held after the passage of this act, in and for the county where the suit originated, or the first term after the granting such bill of injunction; and in all cases of injunction, they shall be disposed of, and a decision made at the second term of
said court, held in and for the county where such suit originated, any law to
the contrary notwithstanding. (And see Sch. Dig. p. 366 and 2d Equity
Rule.)

8. The dilatory practice of granting bills of injunction a second time, after the
dissolution of the first bill or bills, shall not be admissible or allowed of in any
case or cases whatever.—Act of 1811; Prin. Dig. 437.

2. That it shall be lawful for a second injunction to be granted in certain
cases, where a previous injunction may have been dismissed, for cause not con-
nected with the merits of the case, and when the judge to whom the application
may be made, shall be satisfied that a second injunction should issue.—
Act of 1842; pamp. p. 39.

Whereas, great evils have existed and do yet exist in this State, in conse-
quence of the law of England regulating writs of ne exeat not having provided
for cases where the demand set forth by the complainant is not due, and where-
as no provision is made for cases of joint obligors or joint and several obligors,
when a part of them remove, or are about removing without the jurisdictional
limits of this State, without making satisfaction to the obligee or to the other
obligor or obligors, by reason whereof, the payment of the debt devolves on the
obligor or obligors who remain within the State, and that too without the pos-
sibility of compelling the obligors or obligor removing, to pay or secure the
payment of their proportionable part to the obligee or the complaining obligors.
For remedy whereof;

1. Be it enacted, &c. That from and after the passage of this act the judges
of the superior courts shall, and they are hereby authorised to grant writs of ne
exeat, as well in cases where the debt or demand is not actually due, but ex-
ists fairly and bona fide in expectancy at the time of making application, as
in cases where the demand is due; and all the proceedings shall be as hereto-
fore practiced in this State, in restraining the person and property of the defend-
ant until he secures to the complainant the payment of the demand, or shows
good cause to the court why he should not pay the same—all other proceed-
ings to be in the same way as practiced under this writ in other cases.

2. In case of joint or joint and several obligors, if any one or more of them
are about to remove without the jurisdictional limits of this State, and are car-
rying off their property, leaving one or more fellow-obligors bound with them
for the payment of any debt, penalty, or for the delivery of property at a cer-
tain time, which time has not arrived, at the time of such removal, such obli-
gor or obligors who remain, shall have the benefit of the writ of ne exeat to
compel the removing obligor to secure the payment of his part of the debt,
penalty or of the delivery of the property; and also in cases of security, the
security shall have all the benefit of the writ of ne exeat against his principal or
fellow security, where the obligation or debt is not yet due, and the principal
or either of the securities are about removing without the State; provided
nevertheless, that in all cases arising under this act, the party complaining shall
pursue the legal form and course of law as heretofore practiced in this State—
any thing herein contained to the contrary notwithstanding.—Act of 1813;
Prin. Dig. 440.

1. It shall and may be lawful, for any judge of the superior court of this
State, on application to him by bill, at the instance of any person, or persons,
claiming personal property, in remainder, and reversion, to grant a writ of ne
exeat, or other sufficient process, to restrain the person, or persons, having the
control or possession, of such property from removing the same beyond the
limits of this State; or to give good and sufficient security, residing in the
county, to the party claiming, in a sufficient penalty to be fixed by such judge,
that the property shall be subject, and accessible to the demand of the person,
or persons, entitled thereto, in the county wherein such property may be at the
time of issuing of such writ: Provided, that the person, or persons, or one of
them, suing for the benefit of such writ, shall make affidavit of his, her or their
right to, and of the value of the property in question; and that he, she, or they,
entertain serious apprehensions, that the property will be removed beyond the
limits of this State, and that his, her, or their rights, will be impaired, unless
a remedy be afforded for the preservation thereof.

Affidavit of the Remainder-man.

STATE OF GEORGIA, } In person, appeared before me, John Doe, who
Houston County. } being duly sworn, deposes and saith that he is
entitled, in remainder, to a certain negro fellow, named Jim, about
thirty years of age, of the value of five hundred dollars; that said negro
fellow is now in the possession and control of Richard Roe, of said
county, said Richard Roe having a present right and interest in said
negro fellow, under the will of Charles Smith, deceased; and that he,
the said John Doe, entertains serious apprehensions, that the said
negro fellow, Jim, will be removed beyond the limits of this State, by
said Richard Roe, and that the right of deponent in said negro fellow,
Jim, will be impaired, unless a remedy be afforded for the preserva-
tion thereof; and that the facts stated in the foregoing bill, so far as
they depend upon his own act, or deed, are true, of his own know-
ledge, and so far as they depend upon the act or deed of any other
person, he believes them to be true.

Sworn to and subscribed,
before me, this May 1, 1846.
James Mack, J. P.

JOHN DOE.

Defendant's Bond.

STATE OF GEORGIA, } Know all men by these presents, that we,
Houston County. } Richard Roe and Lewis West, security, of said
county, are held and firmly bound unto John Doe, in the just and full
sum of one thousand dollars, for the faithful payment of which sum
we bind ourselves, our heirs, executors and administrators, jointly and
severally, firmly by these presents: sealed with our seals and dated
this May 1, 1846.

The condition of the above obligation is such, that whereas, John
Doe has filed his bill of Discovery and Relief, in the Superior Court of
said county, against said Richard Roe, in which bill said John Doe
prays the issuing, against said Richard Roe, the State's writ of ne exeat,
to restrain said Richard Roe, from removing beyond the limits of this
State, a certain negro fellow, named Jim, of the age of thirty years,
and of the value of five hundred dollars, which negro fellow is now in
the possession and control of said Richard Roe, he having a present
right and interest in said negro fellow, under the will of Charles Smith,
deceased, said John Doe claiming an interest in remainder in said negro
fellow, Jim: now, should the said Richard Roe, well and truly keep
said negro fellow, Jim, subject and accessible to the demand of the said
John Doe, in the said State of Georgia, and abide by and perform any
order, judgment, or decree, touching said negro fellow, Jim, which
may be made, or passed by said court, then the above obligation to be
void; else to remain in full force and virtue.

Tested and approved, by

Richard Roe. [L. S.]
James Mack, J. P.

Lewis West, Séc'y. [L. S.]

[Printed in large type]
2. The Superior Court shall at the term to which such writ and bond may be returnable, and at any subsequent term, on exceptions to the sufficiency of the bond, or of the security, or on a representation on oath, that the securities, or some of them have removed, or are about to remove from the county, determine thereon, and may in its discretion require a new bond, or additional security, for the preservation of the property in controversy; and may pursue such course therein, and in the matter of said bill, as to justice may seem proper.—Act of 1830; Prin. Dig. 469.

1. In all cases where persons may be hereafter arrested by virtue of writs of ne exeat, they shall be discharged on their giving bond, with good and sufficient security, either that they will not depart this State, or for the payment of the eventual condemnation money.—Act of 1830; Prin. Dig. 468.

Defendant’s Bond.

STATE OF GEORGIA, } Know all men by these presents, that we, John
Houston County. } Doe and Richard Roe, security, are held and firmly bound unto Charles Smith, in the just and full sum of one thousand dollars, for the true payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, said Charles Smith has instituted an action by bill of Discovery and Relief, in the Superior Court of said county, against said John Doe, for (here insert the object of the bill,) in which bill, said Charles Smith prays the issuing the State’s writ of ne exeat, against said John Doe, restraining him, the said John Doe, from (here insert the object of the ne exeat,) now, should the said John Doe, well and truly, remain within the jurisdictional limits of this State, (or pay the eventual condemnation money,) to answer the order, judgment, or decree of said court, and stand to, and abide the same, then this bond to be null and void; else, to remain in full force and virtue.

Tested and approved by
James Mack, J. P.

John Doe. [L. S.]
Richard Roe, Sec’y. [L. S.]

1. Where any person or persons has, or shall run out of this State, the property of a deceased person or persons, to the injury of the orphans of said deceased, or to the injury of the next of kin entitled to the same, it shall and may be lawful for the judges of the several courts of equity in this State, upon application and the facts being stated on oath made to the truth thereof, and also the property being described, and its value sworn to by the person or persons entitled to said estate, his, her, or their agent or attorney, to give the party a remedy, either by arresting the defendant or taking his property, or both, as the court in its discretion shall deem necessary and proper. Provided always, that the judge granting the same shall take good security of the party, his, her, or their agent or attorney, in double the amount sworn, to make good all costs and damages the defendant shall sustain, if the plaintiff shall discontinue or be cast in said suit.

Affidavit of the Plaintiff.

STATE OF GEORGIA, } In person appeared before me, John Doe, pro-
Houston County. } chein amî of Richard Roe, orphan of Lewis Roe,
deceased, late of said county, who being sworn, deposeth and saith,
that Charles Smith, of said county, has run out of this State, a negro fellow named Jim, of the age of thirty years, of the value of five hundred dollars; to the injury of the said Richard Roe, orphan of Lewis Roe, deceased, which negro fellow Jim, said Richard Roe is entitled to, as the only heir to the estate of said Lewis Roe deceased, and that the facts stated in the foregoing bill of Discovery and Relief are true, of his own knowledge, so far as they depend upon the act or deed of said John Doe, prochein ami of said Richard Roe, and so far as they depend upon the act or deed of any other person, he believes them to be true.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

JOHN DOE.

Plaintiff's Bond.

STATE OF GEORGIA,

Know all men by these presents, that we, John Doe, prochein ami of Richard Roe, orphan of Lewis Roe deceased, late of said county, and William Graves security, are held and firmly bound unto Charles Smith, in the full sum of one thousand dollars, for the true payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this May 1, 1846.

The condition of the above obligation is such, that whereas the said John Doe has instituted his action by bill of Discovery and Relief, in the Superior Court of said county, returnable to the October term of said Court, eighteen hundred and forty-six, as prochein ami of Richard Roe, orphan of Lewis Roe, deceased, against said Charles Smith, for running out of this State, a negro fellow named Jim, of the value of five hundred dollars: claimed as the property of said Richard Roe, orphan, as aforesaid: now should the said John Doe, well and truly make good all costs and damages which the said Charles Smith may sustain, by reason of the institution of said action, if the said John Doe shall discontinue or be cast in said action, then this obligation to be null and void; else of full force and virtue.

Tested and approved, by

James Mack, J. P.

John Doe. [L. S.]

William Graves, Sec'y. [L. S.]

Defendant's Bond.

STATE OF GEORGIA,

Know all men, by these presents, that we, Charles Smith and Willis Stone security, are held and firmly bound unto John Doe, prochein ami of Richard Roe, orphan of Lewis Roe, deceased, late of said county, in the just and full sum of one thousand dollars, for the true payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, said John Doe has instituted his action by bill of Discovery and Relief, in the Superior Court of said County, returnable to the October term, eighteen hundred and forty-six, against said Charles Smith, charging said Charles Smith with having run out of this State, a negro fellow
named Jim, of the value of five hundred dollars, claimed by said John Doe as the property of said Richard Roe, orphan, as aforesaid; and whereas, said Charles Smith has been arrested under an order of his honor, James Maclemore, judge of said court, upon said bill: now should the said Charles Smith, well and truly stand to, abide and perform the order, judgment and decree of said court in the premises, then the above obligation to be void; else to remain in full force and virtue.

Tested and approved, by

James Mack, J. P.  
Charles Smith. [L. S.]  
Willis Stone, Secy. [L. S.]

3. If the defendant fails, or neglects, or refuses to give such security, the court may make such disposition of the property as in its discretion it shall deem most advantageous to the parties on both sides.—Act of 1814; Prin. Dig. 441.

From and after the passage of this act, it shall and may be lawful for any one distributee, or person interested in any estate, to institute his or her bill, or other proceeding in equity, to compel an account or distribution of an estate, without joining as complainants, or making respondents, the other distributees, or persons having an interest in said estate, residing within the jurisdiction of the court: Provided however, it shall be the duty of such complainant to state in his or her bill, or other equitable proceeding, the names of all the distributees, or persons having an interest in said estate, that the court may be enabled to ascertain the amount of the distributive share to which such complainant is entitled, as nearly as practicable.—Act of 1836; Prin. Dig. 475.

1. That the judges of the superior courts of the counties of Chatham, Richmond and Bibb, respectively, are hereby authorised to appoint a master in equity for each of the aforesaid counties, whose duty it shall be to examine, audit and report, upon all accounts and vouchers, relating to any suit pending in equity in any of the courts of said counties, which may be submitted to him under an order of court; and also to superintend, under the discretion of the court, all sales which may be made by order of court, under decrees in equity.

2. The said masters in equity shall be entitled to receive such compensation for their services, in examining, auditing and reporting upon accounts, as the court and jury trying the particular cause, in which such master’s report is made, shall determine, the amount of compensation thus to be determined to be taxed in the bill of costs in the cause.

3. Before entering on the duties of his office, each master in equity shall take and subscribe the following oath, to wit: "I, A B, do solemnly swear, that I will faithfully discharge the duties of my appointment, to the best of my knowledge, so help me God."—Act of 1830; Prin. Dig. 468.

Note.—A similar authority is given to the Judges of the Courts, for the counties of Burke and Monroe, with the like powers to the officers—see Acts of 1835, p. 153; and also for the counties of Hall, Franklin and Habersham—see Acts of 1812, p. 83.

That when a complaining party seeks, through a court of equity, the specific performance of an agreement to convey land, and a jury shall find in favor of the complaining party, it shall be the duty of the court to cause the description of the land to be set forth in the judgment of the court, and signed by the attorney of the complainant, which judgment shall be entered on the records of the court, (if for land,) and shall be recorded in the county where the land lies; which judgment and decree shall pass the title without any act
to be done by the defendant, and such judgment or decree having been record-
ed, shall be as effectual to transfer the property as the deed of the defendant; 

Provided, that the said judgment or judgments shall not affect any person ex-
cept the party or parties to said bill, further than the deed of the defendants 
would have done, if executed in pursuance of said decree; and as decisive of 
the title as if the complainant had recovered in ejectment, and a writ of pos-
session shall issue as in case of a recovery in ejectment, when the defendant 
to the bill is in possession.—Act of 1839; pamp. p. 141.

1. That when service of any process, writ, bill, order, or rule of court, re-
lating to cases in equity, shall be required to be made by application in any of 
the public gazettes of this State, the publication of the same as aforesaid, once 
a month for four months, shall be deemed, held, and taken to be sufficient, and 
the clerk shall receive for such publication, the sum of five dollars.—Act of 
1838; pamp. p. 168.

Commencement and Conclusion of a Bill.

STATE OF GEORGIA, Houston County. To the honorable the Superior Court of the 
said county, exercising jurisdiction in Equity, in 
and for said County.

Respectfully complaining; showeth unto your honor, your orator 
(or oratrix,) John Doe of said State and county, That, &c., [here state 
the charges, &c., fully, particularly and at length.]

May it please your honor to grant unto your orator, (or oratrix) the 
State’s writ of suipœna, to be directed to the said Richard Roe, there-
by commanding him, at a certain day, and under a certain pain there-
in to be limited, personally, to be and appear, before the honorable 
Superior Court, to be held in and for said county, on the fourth Mon-
day in October next, and, then and there, full, true, direct and perfect 
answer make, to all and singular, the premises; and further to stand 
to, perform and abide such further order, direction and decree therein, 
as to said Court shall seem meet. And your orator, (or oratrix,) shall 
ever pray, &c.

Simon Wake, Compl’t’s Sol’r.

Subœna.

STATE OF GEORGIA, Houston County. To Richard Roe, greeting:—For certain causes 
to us made known, by the bill of complaint of 
John Doe, for Discovery and Relief, filed in the clerk’s office of the Su-
perior Court of said county, on the chancery side of said court, in 
which said John Doe is complainant, and you, the said Richard Roe, 
are defendant, we command and strictly enjoin you, that, laying all 
business aside, and notwithstanding any excuse you have, that you 
be and appear before us, at our Superior Court, to be held in and for 
said county, on the fourth Monday in October next, to answer to all 
such matters and things as may, then and there, be objected against 
you: and to stand to and abide, the further order and decree, then 
and there to be made, in the premises.

Witness, the honorable Walter Means, Judge of said court, this 
May 1, 1846. 

James Holdfast, Clerk.
Demurrer.

STATE OF GEORGIA,

Houston County.

This defendant, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to the said bill; and for cause of demurrer shows (here state the grounds of demurrer). Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto; and he prays the judgment of this honorable court whether he shall be compelled to make any further and other answer to the bill; and he prays to be dismissed from hence, with his reasonable costs in this behalf sustained.

John Roberts, Def't's Sol'r.

Plea.

A Plea is filed like a Demurrer, in the proper office; and pleas in bar of matter in pais must be upon oath of the defendant; but pleas to the jurisdiction of the court, or in disability of the person of the plaintiff, or pleas in bar of any matter of record, or of matters recorded, or as of record in the court itself, or any other court, need not be upon oath.—Mit. Plead. 239.

STATE OF GEORGIA,

Houston County.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's said bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth plead thereunto; and for plea saith, that (here set forth the grounds of the plea.) All which matters and things the defendant doth aver to be true, and pleads the same to the whole of the said bill, and humbly demands the judgment of this honorable court whether he ought to make any answer to the said bill of complaint, and prays to be hence dismissed, with his reasonable costs, in this behalf most wrongfully sustained.

John Roberts, Def't's Sol'r.

Disclaimer.

STATE OF GEORGIA,

Houston County.

The defendant, saving and reserving to himself, now and at all times hereafter, all manner of advantage and benefit of exception, that may be had and taken to the many uncertainties, insufficiencies, and imperfections in the said complainant's said bill of complaint contained, for a full and perfect answer thereto, or to such part of it as it materially concerns this defendant to make answer unto, he answereth and saith, (here set out the grounds of disclaimer.) And this defendant doth deny all manner of unlawful combination and confederacy, unjustly charged against him in and by the complainant's said bill of complaint, material or necessary for this defendant to answer unto, confessed or avoided, traversed or denied, is true: all which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall award; and prays to be hence dismissed, with his reasonable costs and charges, in this behalf, most wrongfully sustained.

John Roberts, Def't's Sol'r.
Commencement and Conclusion of an Answer.

STATE OF GEORGIA, \( \Box \) The answer of Richard Roe, defendant, to the bill of complaint of John Doe, complainant.

This defendant, now, and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant’s said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith, \( \{ \) the defendant must answer according to his knowledge, remembrance, information and belief. \( \} \) And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is, by the said bill, charged; without this that there is any other matter, cause or thing in the said complainant’s said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and prays to be hence dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained. \( \) John Roberts, \( Def’t’s Sol’r. \)

The oath or affirmation of a defendant, to his or her answer, shall be in the following form: “You, A B, do solemnly swear, or solemnly, sincerely and truly declare and affirm, (as the case may be,) that what is contained in your answer, as far as concerns your own act, or deed, is true of your own knowledge; and that which relates to the act, or deed, of any other persons you believe to be true.—11th Equity Rule.

Replication.

STATE OF GEORGIA, \( \Box \) The replication of John Doe, complainant, to the answer of Richard Roe, defendant.

This replicant, saving and reserving to himself all and all manner of exceptions which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto saith: that he doth, and will aver, and maintain, and prove his said bill to be true, certain and sufficient in the law to be answered unto by the defendant, and that the answer is very uncertain, evasive and insufficient in the law to be replied unto by the replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law, to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall direct, and prays, as in and by his said bill he hath already prayed. \( \) Simon Wake, \( Comp’t’s Sol’r. \)
CHANCERY.

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Writ of Injunction.

STATE OF GEORGIA, } To Richard Roe and his confederates, servants,  

Houston County. } agents and every of them—greeting:

Whereas, it appears to me, the subscriber, one of the Judges of the Superior Courts presiding in the Flint circuit, that John Doe, has preferred his bill of complaint, to the Superior Court of the county of Houston, returnable to the October term, eighteen hundred and forty-six, showing [state the substance of the bill,] and whereas, said John Doe, by his said bill, prays the issuing of the State’s writ of Injunction to be forthwith issued, to stay [state the object of the Injunction,] and the said John Doe, having verified the aforesaid facts by oath: I do, therefore, in the name and by the authority of the State of Georgia, strictly enjoin and command you, the said Richard Roe, and all and every, the persons before mentioned, under the penalty of one thousand dollars, that you, and every one of you, do from henceforth, altogether and absolutely, desist [state the object of the Injunction] until the Superior Court shall make further order to the contrary.

To the Sheriff of the County of Houston,—You are hereby commanded to give notice hereof to the said Richard Roe, and all persons before mentioned, by leaving a true and attested copy of the foregoing writ with the said Richard Roe, and the other persons above mentioned, or at their usual and notorious places of abode. Fail not, &c., and make return of this writ to the Superior Court to be held in and for said county, on the fourth Monday in October next.

Witness my hand and official signature, in Chambers, this May 1, 1846.

Walter Means, J. S. C.

Writ of Ne Exeat.

STATE OF GEORGIA, } To the Sheriff of the County of Houston:

Houston County. }

Whereas, John Doe has filed his bill of complaint in the Superior Court of the county of Houston, returnable to the October term, next ensuing, against Richard Roe of said county, which bill is verified by the affidavit of said John Doe, in which bill and affidavit, it is made known to me, (state the substance of the bill) and whereas, said John Doe, by his said bill, prays the issuing of the State’s writ of ne exeat directed to said Richard Roe, commanding and requiring him not to remove beyond the jurisdictional limits of said court; I do, therefore, in the name of the State of Georgia, hereby command you, the said sheriff, to arrest him the said Richard Roe, and he being arrested, safely and securely to keep in your custody, until he, the said Richard Roe, shall enter into bond with good and ample security, in the said county of Houston, in the sum of two thousand dollars, payable to the said John Doe, conditioned, that said Richard Roe will not depart the State without the order of the said court; and in case of the neglect or refusal of the said Richard Roe, to give the said bond and security, as aforesaid, you are hereby commanded to confine the said Richard Roe in the common jail of the said county of Houston, there to remain, without bail or main-prize, until the further order of the said court in the premises. And
you are further commanded to give notice hereof, to the said Richard Roe, by serving on him, personally, a true and attested copy of the foregoing writ. Fail not, &c., and make return of this writ to the Superior Court, to be held in and for said county, on the fourth Monday in October next.

Witness my hand and official signature, in Chambers, this May 1, 1846.

WALTER MEANS, J. S. C.

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Writ of Quia Timet.

STATE OF GEORGIA. To the Sheriff of Houston County, or his lawful deputy—greeting:

Whereas, it hath been represented unto us, by the bill of complaint of John Doe, supported by affidavit, that (here state the grounds upon which the Quia Timet is prayed for, plainly.) And whereas, the said John Doe has prayed a writ of Quia Timet, to stay and prevent all these wrongs and injuries— you, and each of you are, therefore, hereby commanded to arrest the body of said Richard Roe, and him safely and securely keep, until he shall enter into bond with good and sufficient freehold security, in the sum of ten thousand dollars payable to said John Doe, that he will not [here state the object of the Quia Timet] and return the said bond to said court, to be held in and for said county, on the fourth Monday in October next, together with this writ, &c. Herein fail not.

Witness my hand and official signature, in Chambers, this May 1, 1846.

WALTER MEANS, J. S. C.

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MANDAMUS.

Petition for a Writ of Mandamus.

STATE OF GEORGIA, To the honorable James Jones, one of the judges of the Superior Courts of said State.

The petition of John Doe, of said county, respectfully sheweth to your honor that he has now pending in the Inferior Court of said county a certain action of Assumpsit against Richard Roe of said county, alleging that the said Richard Roe from your petitioner unjustly detains the sum of one hundred dollars, besides interest, upon a certain Promissory Note, to said Inferior Court shown, and which Promissory Note is now attached to the Writ in the Clerk’s Office of said Inferior Court; on which action of Assumpsit, before the said Inferior Court, holden in and for said county on the fourth Monday in July, eighteen hundred and forty-five, said Richard Roe filed the plea of the general issue; it was found by the verdict of twelve lawful jurors, duly empanneled, and sworn to try said cause at the January term thereof, eighteen hundred and forty-six, that the said Richard Roe did owe your petitioner, on said Promissory Note, the sum of one hundred dollars for his principal debt, and the sum of seven dollars for his interest, for one year on said sum of one hundred dollars, and the costs of said suit; for which sums said jury rendered their verdict in your petitioner’s favor, which verdict was by said jury duly
returned to said court, at the last aforesaid term thereof, and now remains in the files of said court; and your petitioner, at the said last term of said court, moved said court, then and still consisting of Edwin M. Clark, Asa Boyle, Timothy M. Ludlow, John Willing and Edward Harris, Justices of said Court, to order said verdict to be recorded; and said court did, nevertheless, omit and refuse, and still do omit and refuse, to order the same to be recorded, to the great damage and grievance of your petitioner; all which facts aforesaid do more fully and largely appear by the files and records of said court, here presented to your honor.

Wherefore, your petitioner moves your honor to issue a Writ of Mandamus, requiring and enjoining the said Justices, at the next ensuing term of the said Inferior Court, to be holden in and for said county, on the fourth Monday in July, to order said verdict to be recorded in said cause, and to proceed to final judgment therein, or signify cause to the contrary thereof to this court, to be holden in and for said county on the fourth Monday in October next. And, as in duty bound, your petitioner will ever pray, &c. Simon Wake, Pet'r's At't'y.

Writ of Mandamus.

STATE OF GEORGIA—BIBB COUNTY.

In Chambers, June 1, 1846.

To Edwin M. Clark, Asa Boyle, Timothy M. Ludlow, John Willing and Edward Harris, Justices of the Inferior Court of Houston County.

Whereas, John Doe, of said county of Houston, has now depending before the said Inferior Court, to be holden by you on the fourth Monday in July next, a certain action of Assumpsit against Richard Roe, of said county of Houston, alleging that the said Richard Roe from said John Doe unjustly detains the sum of one hundred dollars, besides interest, upon a certain promissory note to your said court shown, and which promissory note is now attached to the writ in the clerk's office of your said Court; on which action of Assumpsit, before your said Court holden on the fourth Monday in July, eighteen hundred and forty-five, said Richard Roe filed the plea of the general issue; it was found by the verdict of twelve lawful jurors, duly empanelled and sworn to try said cause, at the January term, eighteen hundred and forty-six, that the said Richard Roe did owe to said John Doe, on said promissory note, the sum of one hundred dollars for his principal debt, and the sum of seven dollars, for his interest for one year, on said sum of one hundred dollars, and the costs of said suit; for which sums said jury rendered their verdict in favor of said John Doe, at said last term, which verdict was, by said jury, duly returned to your said Court, at the aforesaid last term thereof; and now remains in the files of your said Court; and said John Doe, at the said last term of your said Court, moved your said Court, then and still consisting of the aforesaid Justices, to order said verdict to be recorded, and you, the said Justices did nevertheless, omit and refuse, and do still omit and refuse to order the same to be recorded, to the great damage and grievance of him, the said John Doe, as by his complaint is understood: Therefore, that due and
speedy justice may be done to the said John Doe, in this behalf, it is hereby required and enjoined, that on the next ensuing term of your said Court, to be held in and for said county, on the fourth Monday in July, you do order the aforesaid verdict to be recorded in said cause, and do proceed to final judgment thereon, or signify cause to the contrary thereof, to this Court, to be holden in and for said County of Houston, on the fourth Monday in October next.

Given under my hand and official signature.

James Jones, J. S. C.

Return to the Writ of Mandamus.

Inferior Court—Houston County—July Term, 1846.

To the honorable Superior Court of the County of Houston, to be held in and for said county, on the fourth Monday in October next.

The Justices of the Inferior Court, within, and for the County of Houston, would respectfully represent, that they have been duly served with a writ which issued, in Chambers, from the honorable James Jones, one of the Judges of the Superior Courts of said State, on the first day of June, eighteen hundred and forty-six, them commanding and requiring, at the term of the Inferior Court, then next to be holden, and which was held in said County of Houston, on the fourth Monday in July, eighteen hundred and forty-six, to cause to be recorded a certain verdict, said to have been given in a certain action of Assumpsit, in which John Doe is plaintiff, and Richard Roe is defendant, and to render final judgment thereon, or to show cause to the contrary thereof, which writ was, and is in the words and figures following, to wit: (here recite the writ.) And that they did not, at the term of said Inferior Court, cause said verdict to be recorded in said cause, nor proceed to final judgment therein, and for cause of such, their omission to do the same, they assign the following reasons, to wit: (here insert at length, the reasons for not recording the verdict.)

Given under our hands and official signatures.

Edwin M. Clark, J. I. C.
Asa Boyle, J. I. C.
Timothy M. Ludlow, J. I. C.
John Willing, J. I. C.
Edward Harris, J. I. C.

That in all cases hereafter to be tried in the superior courts of this State, on the equity side thereof, either party who may be dissatisfied with the verdict of the jury, may enter an appeal in like manner and under the same limitations and conditions as are prescribed in cases at common law, which appeal shall be tried by a special jury under the provisions governing common law cases.—

Act of 1843; pamp. p. 123.

Note.—In preparing bills of injunction, ne exeat, quia timet, or other bills, &c., requiring the chancellor's sanction, it is usual, and always proper, for the complainant's solicitor to write out the injunction or order prayed for, leaving blanks (to be filled up by the chancellor) for sums, dates &c. This should never be omitted.
CHAPTER XII.

EVIDENCE.

Depositions before a justice of the peace may be read against the prisoner if the witness be dead, or, if he be absent, by procurement of the prisoner.—Sch. Dig. 210, n.

Evidence of devise, good to prove the will.—Sch. Dig. 385.

The judges of the superior courts, shall not, in any case whatever, withhold any grant, deed, or other document from the jury, under which any party in a cause may claim title, except such evidence of title as may be barred by the act of limitation.—Act of 1802; Prin. Dig. 210.

That all grand jurors shall be competent witnesses in any court of record in this State, where it may be necessary, on account of any thing that may be given in evidence before them, as a body of grand jurors; any law to the contrary notwithstanding.—Act of 1812; Prin. Dig. 212.

1. From and after the passage of this act, it shall be the duty of the judges of the superior courts, presiding in any of the cases aforesaid, (trials for capital offences, and where the party may be sentenced to penitentiary confinement,) to take, or cause to be taken down in writing, a memorandum of the testimony of all witnesses who may testify in said cases, which said memorandum, taken as aforesaid, in the event of conviction and sentence of the party charged, shall be approved by the court, and ordered to be recorded.

2. In all cases of application for pardon or reprieve, a certified copy of such evidence shall accompany such application.—Act of 1819; Prin. Dig. 214.

1. All laws and resolutions, as published by authority, shall be held, deemed and considered public laws and resolutions; and the several courts of law and equity of this State, shall take notice thereof as such; any law, usage, or custom to the contrary notwithstanding.

2. The certificate or attestation of any public officer, either of the State, or of any county thereof, shall give sufficient validity or authenticity to any copy or transcript of any record, document, or paper of file, in the respective offices under their control or management, or to which they may be lawfully attached, to admit the same as evidence, before any court of law or equity in this State; Provided nevertheless, that nothing herein contained shall be so construed as to prevent any of the judges of the superior or inferior courts to require the original, or that it be accounted for.—Act of 1819; Prin. Dig. 215.

The certificate of any public officer, under his hand and seal of office, if one is attached thereto, either of this State or any county thereof, in relation to any matter or thing, pertaining to their respective offices, or which by presumption of law, properly pertains thereto, shall be admitted as evidence, before any court of law, or equity, in this State; Provided nevertheless, that
nothing in this act contained, shall be so construed, as to prevent any court

to require the production of the original to which said certificate may apper-
tain, or that it may be accounted for.—Act of 1830; Prin. Dig. 220.

That from and immediately after the passage of this act, no person shall be

excluded from testifying as a witness in any of the courts of law or equity in

this State, or deprived of his, her, or their oath or affirmation touching any

matter or thing where an oath or affirmation is necessary to secure any right

or interest whatsoever, by reason of any religious opinion such person or persons

may entertain or express; Provided, nothing in this act shall prohibit such

disabilities going in evidence to the jury to affect the credit of such witness

or witnesses.—Act 1841; pamp. p. 144.

In all causes now pending, or which may hereafter be instituted, in any of

the courts of law or equity in this State, against the principal and securities, or

either of them, on any official bond given by any executor, administrator, or

guardian, or any other public officer of this State, it shall be lawful for the said

courts to receive as evidence of the fact of the due execution of such bond, a

certified copy thereof, made by the proper officer, when such bond is of file or

recorded, which copy shall be sufficient testimony in the cause, unless the same

shall be denied on oath.—Act of 1823; Prin. Dig. 217.

19. Where the attendance of any person shall be required as a witness in any

of the courts aforesaid, in any cause depending therein, it shall be the duty of

the clerks of the said courts respectively, on application, to issue writs of sub-

pæna directed to the persons whose attendance shall be required, where such

persons reside within the county in which such cause may be depending, which

writ of subpæna shall express the cause, and the party at whose suit it shall

be issued, and shall be served on such witnesses at least five days before the

court to which it shall be returnable, and which writ shall be served by a she-

riff, constable, or some private person, and the return of a sheriff or constable

of such service, or the affidavit of any private person, shall be sufficient evi-

dence that such subpæna was duly executed.

20. Where it shall appear in manner aforesaid, that a witness in any cause,

shall have been duly summoned, and such witness shall fail to appear, it shall

be the duty of the court, on motion, to issue an attachment against such de-

faulting witness, returnable to the next court, and shall fine such witness in a

sum not exceeding three hundred dollars, unless he or she shall make a suffi-

cient excuse for such non-attendance, which shall be judged of by the court;

but shall nevertheless be subject to the action of the person at whose suit

such witness shall have been summoned, for any damage which he, she, or

they may have sustained, by reason of such non-attendance.

21. When a subpæna shall be served on any witness, in conformity to this

act, it shall be the duty of such person, so summoned to attend, from time to

time, until the cause in which such witness shall have been summoned is

tried, or be otherwise discharged by the court.

22. On the last day of the attendance of any witness in each term, it shall

and may be lawful, on application of such witness, to exhibit his account for

attendance, against the person or persons at whose suit he or they may have

been summoned, and the judge or presiding justice shall examine and certify the

same under his hand, which shall be countersigned by the clerk, whereupon

such account so certified, shall have the force and effect of an execution, and

may be levied by the sheriff or constable, according to the amount thereof,

off the goods and chattels of such party, in like manner as in cases of other

executions. Provided nevertheless, that where any witness shall claim, and

levy for more than is really due, such witness shall forfeit and pay to the

party injured four times the amount of the sum so unjustly claimed. And no
party cast in any suit shall be taxed for more than the cost of two witnesses to any material point in any case, which shall be specially certified by the court trying the same; nor shall any party be allowed to tax costs for different witnesses to different material points, where the same witnesses shall be sufficient, in the opinion of the court, to prove such material points.—Act of 1799; Prin. Dig. 424.

7. Any justice of the peace may issue summonses for witnesses resident within the county in any case to be tried before him, which shall be served five days before the day of trial, and such witnesses shall be subject to a fine not exceeding § 10 for default, at the discretion of said justice, and moreover be liable to the party grieved by action, in any court having jurisdiction of the same, for any damages he may sustain by such default, who may issue execution for the amount of said fine; Provided sufficient excuse shall not be made at or before the next court day; provided also, that all witnesses duly summoned, and attending said court, who may reside out of the district where such court may be held, shall receive seventy-five cents per day for their attendance, and provided also, that there shall not be taxed in the bill of cost the expense of more than two witnesses to prove the same fact; and it shall be the duty of all persons summoned as aforesaid, to attend from time to time until the cause shall be determined, or they be otherwise discharged by the court; and all fines shall be paid into the hands of the inferior court for the use of the county.—Act of 1811; Prin. Dig. 504.—And see Interrogatories.

Witnesses shall first be examined by the party introducing them, then cross-examined by the adverse party; further examination shall not be had but by leave of the court first obtained, and then only upon the declaration of the attorney or witness, that a material fact has not been stated, to which all further inquiries shall be directed; and in all cases in which more than one attorney is retained on either side, the examination and cross-examination, shall be conducted by one of the counsel only; and at the opening of the case both parties shall state to the court to which attorney the examination and cross-examination of witnesses is confined.—74th com. law rule.

Subpœna.

STATE OF GEORGIA,  
Houston County.

To James Lewis of said county—greeting:

You are hereby commanded that, laying all other business aside, you be and appear at the Superior Court, to be held in and for said county, on the fourth Monday in October next, then and there to be sworn as a witness for the plaintiff, in the cause of John Doe against Richard Roe, in an action of Assumpsit in said court pending. Herein fail not, under the penalty of the law.

Witness, the honorable Hugh Burns, one of the judges of the Superior Courts; this May 1, 1846. JAMES HOLDFAST, C. S. C.

That from and after the passage of this act, in the superior and inferior courts of this State, it shall not be necessary for the judge or presiding justice to examine and sign the accounts of witnesses, serving under subpœnas, as is now required by law; but the same being examined and signed by the Clerk of such court, shall have the same force and effect as now directed by law.—Act of 1842; pamp. p. 167.

Affidavit of Witness.

STATE OF GEORGIA,  
Houston County.

Personally appeared before me, James Mack, a justice of the peace, in and for said county, James
Lewis, who being duly sworn, deposeth and saith, that he attended the court six days on the within writ of subpœna.

Amount due, $4 50.

Sworn to and subscribed, before me, this Oct. 30, 1846.

James Mack, J. P.

Examined and allowed, October 30, 1846.

JAMES HOLFAST, C. S. C.

1. That from and after the passing of this act, when any deed bond, note, or other writing which it may be necessary to use as testimony in any cause which now is, or may be hereafter pending in any of the superior or inferior courts of this State, may be in the possession of any person not a party to said cause, and not resident within the county in which said cause is pending, the clerk of the court in which said cause is pending, shall, upon the application of the party, or his attorney, desireous of procuring such testimony, issue a subpœna duces tecum, directed to the person having such deed, bond, note, or other writing in his possession, and requiring him to be and appear at the next term of said court, and to bring with him into said court the paper desired to be used as testimony, which said subpœna duces tecum shall be served thirty days before the court to which it is made returnable by a sheriff, constable, or some private person: and the return of the sheriff, constable, of such service, or the affidavit of such private person, shall be sufficient evidence that the subpœna was duly served.

2. When a subpœna shall be issued and served in terms of the first section of this act, and the person whose attendance is hereby required shall fail to comply with the requisitions thereof, it shall be the duty of the court, on motion, to issue an attachment against such defaulting witness, returnable to the next term of said court, and shall fine such witness in a sum not exceeding three hundred dollars, unless he or she shall make a sufficient excuse for such failure, which shall be judged of by the court, but shall nevertheless be subject to the action of the person at whose suit such witness shall have been summoned, for any damage which he, she, or they may have sustained by reason of such failure: Provided, nevertheless, that if the person so subpoenaed shall, within ten days after the service of said subpœna, deliver to the party at whose instance the subpœna was sued out, or his attorney, or file in the office of the clerk of the court from which such subpœna issued, the paper, the production of which is required by such subpœna, or shall deliver to the said party, or his attorney, or shall file in the said office, his affidavit that the said paper is not in his power, custody, possession or control, nor was it at the time of serving said subpœna, then, and in that case, such delivery or filing of the paper so sought as aforesaid, or of such affidavit, shall be considered in full and complete compliance with the requisitions of such subpœna duces tecum.

3. In any cause now pending, or which may hereafter be pending, in the superior or inferior courts of this state, where any party shall pursue the course hereinbefore pointed out, but who is unable thereby to procure such written instrument, such party shall be permitted to go into parol evidence of the contents of such written instrument.—Act of 1829; Prin. Dig. 218.

Subpœna Duces Tecum.

STATE OF GEORGIA,

To James Kent, of the County of Macon—

Greeting:

You are hereby commanded and required, that laying all other business aside, you be and appear, at the Superior Court, to be held in
EVIDENCE.

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and for the County of Houston, on the fourth Monday in October next; and bring with you, and produce in said court, a deed of conveyance, for lot of land number forty-nine, in the tenth district of Houston County, from John Doe to Richard Roe, which deed is dated, the first day of January, eighteen hundred and forty-six; which is intended to be used as evidence by the plaintiff, in an action of Ejectment, pending in said court; in which action Charles Smith, ex. dem. Roger Cook, is plaintiff, and John West casual ejector, and Timothy House, tenant in possession, are defendants. Herein fail not, under the penalty of the law.

Witness, the honorable Hugh Burns, Judge of said court, this May 1, 1846.

JAMES HOLDFAST, C. S. C.

Affidavit of Witness.

STATE OF GEORGIA,

Macon County. In person appeared before me, Samuel Jameson, a Justice of the Peace, in and for said county, James Kent, who being duly sworn, deponeth and saith, in answer to a subpoena dueces tecum, this day served on said deponent, that he hath not now, nor had he in his possession, at the time of the service of said subpoena, a Deed for lot of land, number forty-nine, in the tenth district of Houston county, from John Doe to Richard Roe, dated the first day of January eighteen hundred and forty-six; nor is said deed in his power, custody, possession or control, in any way, or manner whatever.

Sworn to and subscribed, before me, this May 5, 1846.

Samuel Jameson, J. P.

JAMES KENT.

Interrogatories.

That after the passing of this act, it shall and may be lawful where any witness resides out of the State or out of the county, or where any witness resides within the same, and being a seaman, patroon of a boat, stage driver, mail carrier, aged or infirm person, and in all other cases where the evidence of any witness can not be duly obtained, in which his or her testimony may be required in any case, it shall be lawful for either party on giving at least ten days' notice to the adverse party, or his, her or their attorney, accompanied with a copy of the interrogatories intended to be exhibited, to obtain a commission from the clerk of the court in which the same may be required, directed to certain commissioners, to examine all and every such witness or witnesses, on such interrogatories as the parties may exhibit, and such examination shall be read on the trial, on the motion of either party, any rule, order, or law to the contrary notwithstanding.—Act of 1811; Prin. Dig. 211.

23. Where any witness resides out of the State, or out of any county in which his testimony may be required in any cause, it shall be lawful for either party, on giving at least ten days' notice to the adverse party, or his, her, or their attorney, accompanied with a copy of the interrogatories intended to be exhibited, to obtain a commission from the clerk of the court in which the same may be required, directed to certain commissioners, to examine all and every such witness or witnesses, on such interrogatories as the parties may exhibit; and such examination shall be read at the trial, on motion of either party.—Act of 1799; Prin. Dig. 425.
EVIDENCE.

Note.—It is usual, in practice, where it is convenient, for the opposing counsel to waive the necessity of notice, copy interrogatories and the original interrogatories remaining in the clerk's office the time required by the statute, crossing them at once, and making the following entry, upon the original interrogatories: "Copy and notice waived. Let commission issue, upon application. May 1, 1846." SIMON WAKE, Def't's Atty.

2. Where any convict confined in the penitentiary is a witness in any civil cause, depending in any court of this State, and his testimony required, the same shall be taken by commission, and read at the trial of such civil cause; and in no civil case shall such convict be removed from the penitentiary to give personal attendance at court. But before such commission issues, the party, or his or her attorney, requiring such commission, shall file an affidavit, with the record of the proceedings, that the convict to be examined is a material witness in the cause.—Act of 1816; Prin. Dig. 617.

Party's Affidavit.

STATE OF GEORGIA,}

Houston County.}\n
Personally appeared before me, James Mack, a Justice of the Peace in and for said county, John Doe, who being duly sworn, deposed and saith that he has commenced his action of Assumpsit in the Superior Court of said county, against Richard Roe; that said action is now pending and undetermined in said court, and that Charles Smith, a convict in the penitentiary, is a material witness for deponent in said action, and that deponent desires to take the testimony of said Charles Smith, by commission, according to the statute in such case made and provided.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

JOHN DOE.

1. From and after the passage of this act, when the testimony of any female shall or may be required in any of the superior or inferior courts which may be held in this State, criminal cases only excepted, it shall and may be lawful for either party, on giving at least ten days' notice to the adverse party, or his, her, or their attorney, accompanied with a copy of the interrogatories intended to be exhibited, to obtain a commission from the clerk of the court in which the same may be required, directed to certain commissioners, to examine all and every such witness or witnesses, on such interrogatories as the parties may exhibit; and such examination shall be read at the trial on motion of either party.

2. If any person as above recited shall refuse to appear before commissioners appointed to take her or their examination, or appearing, shall refuse to answer such legal interrogatories as shall be annexed to said commission, and exhibited to her or them, it shall be lawful for either of said commissioners, or the party upon whose application the said commission was issued, to proceed in conformity to the laws now in force, pointing out the mode of proceeding in cases of failure or refusal to attend, or answer interrogatories, in other cases.—Act of 1829; Prin. Dig. 219.

1. That if the testimony of any persons residing within the said State shall be required in any suit pending in any court of record in either of the United States, and he, she, or they shall refuse to appear before commissioners appointed to take his or her examination, under a commission properly issued and authenticated agreeably to the laws and rules of the courts of the State from which it shall be sent, or appearing, shall refuse to answer to such legal interrogatories as shall be annexed to said commission, and exhibited to him, her, or them, it shall be lawful for either of the said commissioners, or the
party upon whose application the said commission was issued, to apply to any judge of the superior courts of this State, or justice of the inferior court of the county within which such person whose testimony is required may reside, and upon producing before him such commission, and his being satisfied of its regularity, and on affidavit being made of such refusal, he shall issue a subpoena in the usual form, directed to such person or persons as aforesaid, requiring him, her, or them, to be and appear before the said commissioners at a certain time and place, to answer to such legal interrogatories, as may be annexed to the said commission, and then exhibited to him: Provided, that he shall not be required to attend such examination, and give answer to the said interrogatories, within less than two days after the service of the said subpoena, neither shall he be obliged to attend for such examination out of the county where he resides, nor more than ten miles from the place of his residence, and upon due service of the said subpoena upon such person or persons, the same shall be returned to the commissioners on or before the time appointed for the examination and the service of such subpoena, proven by the return of the proper officer; and on the refusal or neglect of such person or persons to comply with its mandate, endorsed on or annexed to the said subpoena, and return to the superior or inferior court, as the case may require, of the county in which such person or persons reside, he, she, or they shall be subject for such neglect or refusal to all the pains and penalties to which such person or persons would have been subject for a similar default in any cases pending in the courts of this State.

2. The person or persons whose evidence shall be required as aforesaid, shall, if they or any of them shall require the same, be entitled to the same fees or pay as persons summoned to give evidence in the superior or inferior courts of this State.—Act of 1794; Prin. Dig. 209.

That all the provisions of the said recited act, (act of 1794,) be, and the same are hereby extended to the cases of the persons who may refuse to appear before the commissioners, and give evidence under commissions issued from any of the counties of this State.—Act of 1839; pamph. p. 145.

Party's Affidavit.

STATE OF GEORGIA, } In person appeared before me, James Mack, a
Houston County. } Justice of the Peace in and for said County, John
Doe, who being duly sworn, deposeth and saith, that he hath commenced in the Circuit Court of the State of South Carolina, Chesterfield district, his action of Assumpsit against Richard Roe; that said action is now pending and undetermined in said Court; that Charles Smith, of the county and State first aforesaid, is a material witness for deponent in said action of Assumpsit; that a Commission (having certain interrogatories thereto annexed,) in legal and proper form, agreeably to the laws of South Carolina, issued in said case, to take the testimony of said Charles Smith; that said Commission has been presented to Robert Thomas and James Jones, commissioners, who have required the personal attendance of said Charles Smith, by subpoena, that his testimony might be taken to said interrogatories; that said Charles Smith positively refuses and neglects to appear before said commissioners for examination, as required.

Sworn to and subscribed, before me, this May 1, 1846. 

James Mack, J. P.

JOHN DOE.

1. That when any witness shall fail, refuse, or neglect to appear before commissioners, for the purpose of answering interrogatories appended to a
commission issuing from any court in this State, in which court the case may be pending, for which said interrogatories are intended to be taken, upon the application of the commissioners therein named, it shall and may be lawful for the party at whose instance said interrogatories are to be taken, his, her, or their attorney, or for either of the commissioners to make affidavit of such failure, refusal or neglect, and upon application made to any judge of the superior or justice of the inferior court, of any circuit or county in which said witness may be when applied to, to be examined, accompanied with such affidavit, to issue an order to all and singular the sheriffs, constables, and coroners of this State, commanding them to bring said witness before him; and upon such judge or justice being satisfied of the legality of such interrogatories, it shall be the duty of such judge or justice to order the officer having said witness in custody, to deliver said witness to the jailer of such county, and be by the said jailer confined in the common jail of said county, until he or she shall answer the interrogatories propounded to him or her, to said commission attached.

2. That nothing herein contained shall be so construed as to prevent the court from which said commission issued, from punishing said witness for contempt of said court.—Act of 1840; pamp. p. 111.

Party's Affidavit.

STATE OF GEORGIA,

In person appeared before me, James Mack, a justice of the peace, in and for said county, John Doe, who being duly sworn, deposeth and saith, that he has commenced his action of Assumpsit in the Superior Court of the county of Dooly, in said State, against Richard Roe, which action is now pending and undetermined in said court; that a commission, with certain interrogatories thereto annexed, issued from said court, in conformity to law, to take the testimony of Charles Smith, of the county of Houston, a material witness in said case on the part of deponent; that said commission has been presented to Robert Thomas and James Jones, as Commissioners; that said Commissioners have required the personal attendance of said Charles Smith by subpœna, that his examination might be taken; but said Charles Smith, without any legal excuse, fails, refuses, and neglects to appear before said commissioners for the purposes aforesaid.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

JOHN DOE.

Order.

STATE OF GEORGIA—HOUSTON COUNTY.

In Chambers, May 1, 1846.

To all and singular, the sheriffs, constables and coroners, of this State:

Whereas, I have been informed, by the affidavit of John Doe, this day, made before James Mack, a justice of the peace, in and for said county, that said John Doe has commenced his action of Assumpsit, in the Superior Court of the county of Dooly, against Richard Roe; that said action is now pending and undetermined, in said court, that a commission, with certain interrogatories thereto annexed, issued from said court, in conformity to law, to take the testimony of Charles
Smith, of the county of Houston, a material witness in said case, on the part of the deponent; that said commission has been presented to Robert Thomas and James Jones, as commissioners; that said commissioners have required the personal attendance of said Charles Smith, by subpoena, that his examination might be taken, but said Charles Smith, without legal excuse, fails, refuses and neglects to appear before said commissioners, for the purposes aforesaid: you, and each of you, are, therefore, hereby commanded to arrest him, the said Charles Smith, forthwith, and bring him before me, at Perry, by ten o'clock of the forenoon of the second instant, (to-morrow,) that he may be dealt with as the law directs. Herein fail not.

Given under my hand and official signature, this May 1, 1846.

Robert Willis, J. I. C.

7. And when any witness resides out of the county, whose evidence may be material for either party in any cause pending in the said justice’s court, it shall and may be lawful for the party wishing to obtain such testimony to obtain a commission from the justice issuing the summons, first giving the adverse party, his agent or attorney, five days’ notice, accompanied with a copy of the interrogatories intended to be exhibited, which commission shall be directed to any two or more freeholders, one of whom shall be a justice of the peace, to examine on oath all and every such witness or witnesses; and such examination, when so taken, shall be sealed up by the commissioners, and directed to the magistrate by whom it was issued, and on returning the same, shall swear that it has undergone no alteration from the time of his receiving it of the commissioners; and the commission and the interrogatories so issued, executed, and returned, shall be read on the trial at the instance of either party.—Act of 1811; Prin. Dig. 504.

Commission.

STATE OF GEORGIA,  

Houston County.

By James Mack, one of the Justices of the Peace, in and for the 619th district, G. M. of said county.

To Esq’rs—Greeting:

Whereas, there is a certain matter of controversy, pending in the justices’ court, in and for the 619th district, G. M., between John Doe, plaintiff, and Richard Roe, defendant; and whereas, Robert Truth is a material witness for the plaintiff, and cannot attend said court without manifest inconvenience: now, know ye, that we, reposing especial trust and confidence in your prudence and fidelity, have appointed you, or any two or more of you, (one being a justice of the peace,) who are hereby authorised and required to cause the said Robert Truth, personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto annexed; and the answers to the same being plainly and distinctly written, you are to send closed up, under your hands and seals to our said court, to be held on the first Saturday in July next, together with this writ.

Witness my hand and seal, this May 1, 1846.

James Mack, J. P. [L. S.]
Notice of Copy Interrogatories.

JOHN DOE

vs.

RICHARD ROE.

Debt in Justice's Court, 619th district, G. M., copy
Interrogatories and Notice.

The defendant is hereby notified, that I have this day, filed in the
office of James Mack, one of the Justices of the Peace for said district,
the original Interrogatories, (directed to Robert Truth, the witness to
be examined,) of which the annexed is a copy, and that commission
will be applied for, agreeably to the statute in such case made and
provided; this May 1, 1846.  

JOHN DOE, P'tff.

Oath of the Person Returning the Packet.

You do solemnly swear, that you received this packet from the
commissioners, (or one of them,) that it has undergone no alteration
from the time of your receiving it, and that it has been in your pos-
session ever since—so help you God.

Commission in the Superior Court.

STATE OF GEORGIA, By his honor James Wilkins, one of the Judges of
Houston County, of the Superior Courts of said State.

To Esq'rs—greeting:

Whereas, there is a certain matter of controversy, now pending in the
Superior Court, for said county, between John Doe, plaintiff, and Rich-
ad Roe, defendant; and whereas, Robert Truth is a material witness
in said suit, and cannot attend our said court, in person, without mani-
fest inconvenience:

Now, know ye, That we, reposing special trust and confidence in
your prudence and fidelity, have appointed you, and you, or any two,
or more of you, are hereby authorised and required to cause the said
Robert Truth, personally, to come before you, and after being duly
sworn, to examine him concerning the said suit, agreeably to the
Interrogatories hereunto annexed; and the answers to the same being
plainly and distinctly written, you are to send the same, closed up,
under your hands and seals, to our said court, to be held on the fourth
Monday in October next, together with this writ.

Witness my hand and seal of office, this May 1, 1846.

JAMES HOLDFAST, C. S. G. [L. S.]

Direct Interrogatories.

JOHN DOE

vs.

RICHARD ROE.

Assumpsit in Houston Superior Court.

Interrogatories to be exhibited to Robert Truth, a material witness
on the part of the plaintiff, and who resides out of the county of
Houston.

Int. 1. Do you know the parties?

Int. 2. Please state all you know, or have heard the defendant say,
about his owing the plaintiff money; when was it? How much did
the defendant say he owed the plaintiff?

Int. 3. State fully, and at large, all you know or have heard the
defendant say, that will benefit the plaintiff, as if particularly interro-
gated thereto.

SIMON WAKE, P'tff's Att'y.
**Cross Interrogatories.**

*Int. 1.* Did not the defendant say, in the conversation of which you testify, that he had paid the plaintiff all he ever owed him?

*Int. 2.* Do you not know, from what you have heard the plaintiff say, that the defendant has payed him all the money he ever owed him?

*Int. 3.* State, fully and particularly, all you know, or have heard the plaintiff say, that will benefit the defendant, as if particularly interrogated thereto.

**Answers to the Direct Interrogatories.**

**STATE OF GEORGIA—BIBB COUNTY.**

JOHN DOE  
RICHARD ROE.

Assumpsit in Houston Superior Court.

By virtue of a Commission, to us directed, from the honorable Superior Court of Houston county, we have causes Robert Truth, the witness in said commission named, to come before us, and being duly sworn true answers to make, to certain interrogatories to said commission attached, deposeth and answereth as follows, to wit:

To the first direct interrogatory, he answers—I do.

To the second direct interrogatory, he answers—I was at Pace's store, in this county, on Saturday last, and had a conversation with the defendant, relative to a suit instituted against him by the plaintiff in Houston Superior Court, in which conversation he said, he owed the plaintiff one hundred dollars borrowed money.

To the third direct interrogatory, he answers—I know nothing more that will benefit the plaintiff.

**Answers to the Cross Interrogatories.**

To the first cross interrogatory, he answers—If, in our conversation, the defendant said he had paid the plaintiff, I do not recollect it. I did not so understand him.

To the second cross interrogatory, he answers—I do not recollect having heard the plaintiff say the defendant had paid him all he owed him.

To the third cross interrogatory, he answers—I know nothing more that will benefit the defendant.  
Answered, subscribed and sworn to, before us, this May 1, 1846.  
CHARLES SMITH, Com'r.  
JOHN JACKSON, Com'r.

**ROBERT TRUTH.**

**Directions.**

1st. Fill up the blank left in the commission with the names of the commissioners; the names should be written out in full.

2d. There must not be less than two commissioners; they should be substantial, respectable men.

3d. The answers may be written on a separate sheet of paper, if (as is generally the case) that which contains the interrogatories is not sufficiently large, and attached to the commission; but they must not be in the hand-writing of any of the parties, or of any attorney engaged in the case, nor must they be previously written by any such person, and then transcribed.

4th. Direct the packet thus:
5th. The packet must be sealed with as many seals, as there are commissioners; each commissioner must write his name across one of the seals.

6th. The packet may be forwarded by mail; if that course is taken, the commissioners, or one of them, must deliver it to the Post Master, who enters upon it "Received, Macon, Bibb County, (Ga.) from the hands of Charles Smith, one of the commissioners, this packet to be forwarded by due course of mail, this May 1, 1846."

Stephen Bean, P. M. at Macon.

7th. The Post Master, at the place to which the packet is directed, and where it is to be used, must bring it into court, and swear, "that it came to his office, by due course of mail; has been in his possession ever since, and has remained unopened and unaltered. (It is not the practice in all the circuits to require the P. M. to be sworn.)

8th. The packet may be returned by some private person; in this case, he will have to swear, "that he received it from the hands of the commissioners (or one of them); that it has remained, unopened and unaltered, in his possession ever since."

9th. When the packet is presented in court, and received, the party must move the court for leave to open it. The clerk makes the following entry on the packet:

"Received, on the usual oath of John Doe, and leave to open, granted; this May 1, 1846."

James Holdfast, C. S. C.

When a cause is proceeding ex parte to a jury, interrogatories may be served by depositing a copy with the clerk, and posting a notice to that effect in his office, addressed to the party in default, ten days before issuing out a commission. No exception to a written interrogatory on the ground that it is a leading question shall prevail, unless it be filed with the interrogatories before the issuing of the commission.—46th com. law rule.

All objections to the execution and return of interrogatories on appeal trials; the form of the commission, or service of notice, must be made by the party seeking to avail himself of them, before the cause has been submitted to the jury, or they will not be heard by the court: provided that the said interrogatories have been twenty-four hours in the clerk's office; and if they have remained in the possession of the party intending to use them, they shall be communicated to the adverse party before the cause is called for trial.—47th com. law rule.

Commissions may issue in blank in so far as relates to the names of the commissioners, but the names of the witnesses intended to be examined, shall be distinctly specified in the notice served upon the adverse party, preparatory to issuing the commission. See 23d section of the judiciary of 1799.—In Prince, the 22d section, 425th page.—28th com. law rule.

The time to be allowed for the return of commissions from any part of the United States of North America, if less than one hundred miles distant from the place of trial, shall be one month; if a greater distance, and less than five hundred miles, two months; if at a greater distance, three months; to any part of the West Indies, or South America, four months; to any part of Europe, eight months.—29th com. law rule.

When a commission is returned, it shall remain with the clerk for the benefit of either party, and may be opened by consent of both parties, such consent being written on the cover of the commission, or by an order of the judge, either in term time or in vacation; but such order, if applied for in vacation, must be upon five days' notice to the adverse party, or his attorney; and in cases of commission returned not executed or directed according to rule, either party in the case shall, upon five days' notice to the adverse party, or his attorney, be permitted to return the commission and its contents to the commissioners, to be properly executed and directed.—30th com. law rule.
EVIDENCE.

Affidavit.

STATE OF GEORGIA,  

Houston County.  

In person appeared before me, John Doe, who being duly sworn, deposeth and saith, that he received this packet of Interrogatories, from the commissioners, (or one of them), that it has been in his possession ever since, unopened and unaltered.

Sworn to and subscribed, before me, this May 1, 1846.

James Holdfast, C. S. C.

Received in office, this May 1, 1846, on the oath of John Doe.

JAMES HOLFFAST, C. S. C.

Commissions may be sent and returned by mail, to entitle the party to open the commission; the Post Master, his deputy or assistant must receipt on the back, "Received from A B, one of the commissioners." The names of the commissioners must be written across the seals of the envelope, and the commission have such direction as will enable the court to know that it was intended for that court, and the usual abbreviations or initials of christian names of commissioners, witnesses, attorneys, clerks, magistrates and postmasters, shall be sufficient.—31st com. law rule.

When a commission issues to examine a witness, its not having been returned shall be no cause of continuance, unless the party seeking the continuance will make the same affidavit of the materiality of the testimony, as in the case of an absent witness.—32d com. law rule.

That in case either plaintiff or defendant, may deem any witness or witness-es material, on any cause or causes pending in any of the courts of law in this State, and who are going beyond seas, removing without the jurisdiction of the State aforesaid, or from age or other bodily infirmity, may be unable, personally, to attend the said court, application by petition to the Judge of the Superior Court, if the action is there pending, or in his absence to one, or more Justices of the Inferior Court, stating the grounds for such application, to which petition the party so applying shall annex an affidavit, stating the materiality of the witness or witnesses, that he, she, or they, are removing without the jurisdiction of the State aforesaid, or going beyond seas, or from age, or bodily infirmity, are unable to attend court; and that he cannot with safety proceed to trial without such testimony. And it shall be the duty of the judge, justice or justices, to grant the prayer of the petitioner, and fix a day on which he, or they will attend to receive and take the examination of such witness or witnesses, and when he or they shall have so taken and received the testimony aforesaid, the same shall be sealed up, and directed to the clerk of that court, in which the suit or action may be then pending: Provided always, the adverse party have at least three days' notice for every twenty miles, be, she, or they, may reside from the place of taking such examination: And provided also, that in case the person or persons, whose testimony shall have been taken, return or be able to attend such court, that then, and in that case, such written testimony shall not be received or read.—Act of 1806; Prin. Dig. 216.

1. The act, entitled "An act the more effectually to ensure the testimony of witnesses going beyond seas, or removing without the jurisdiction of the State, and aged and infirm persons," passed the 5th day of December, 1806, be, and the same is hereby re-enacted, and declared to be operative and effectual in all cases pending, or which may be brought in the several courts of this State.

2. In all cases which are or shall be pending in any of the courts of this
State, when any one person is the only witness to any material fact, in any case, it shall and may be lawful to examine such witness de bene esse, on complying with the provisions of the aforesaid act, in so far as the same are applicable to such case; and that the examination so taken shall be read in evidence in such cause, on the terms, and under the restrictions, specified in the said act.—Act of 1823; Prin. Dig. 215.

That the act (for which this is amendatory, Act of 1823,) more effectually to ensure the testimony of witnesses going beyond sea, and aged and infirm persons, passed on the 8th day of April, 1806, which had been repealed, and again re-enacted, and declared to be operative and effective, in all cases pending, or which may be brought in the several courts of this State, by act of 20th December, 1823, be amended as to read as follows, to wit: that in case either plaintiff or defendant may deem any witness or witnesses material, in any cause or causes, pending in any of the courts of law and equity of this State, and who are going beyond seas, removing without the county, or beyond the jurisdiction of the State, or whose official or other business would require his absence from the county at the term of trial of said cause, or from age or other bodily infirmity, may be unable to attend court, it shall and may be lawful to examine any such witness or witnesses under commission, or serving and filing interrogatories in the manner prescribed by law, in case where witnesses reside out of the county; Provided, that in case the person or persons whose testimony shall have been taken, return or be able to attend, that then and in that case, such written testimony shall not be received or read.—Act of 1838; pamp. p. 245.

The acts of the legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the courts of any State shall be proved or admitted in any other court within the United States by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from whence the said records are, or shall be taken.—Act of Congress of 1790; Prin. Dig. 221.

Clerk Court of Ordinary's Certificate.

STATE OF GEORGIA, ) I, Bryant B. Legget, clerk of the Court of Ordinary, of said State and county, do hereby certify that the above and foregoing contains a true and exact copy of the last Will and Testament of John Doe, deceased, as the same was admitted to probate and record in said court, as appears in the Records of Wills in my office.

Given under my hand and seal of office, this May 1, 1846.

BRYANT B. LEGGET, C. C. O. [L. S.]

Justice Inferior Court's Certificate.

STATE OF GEORGIA, ) I, Edwin M. Clark, one of the Justices of the Inferior Court of said county, in which Inferior Court the powers of the Court of Ordinary, or Register of Probates, are vested, by the laws and Constitution of said State, do hereby certify that Bryant B. Legget, whose name appears to the foregoing certificate, was, at the time of making said certificate, clerk of the Court of Ord-
nary of said county, as he is therein represented to be. That his said certificate is in due form and by the proper officer; and that the above signature, purporting to be his, is genuine.

Given under my official signature, in Chambers, this May 1, 1846.  
EDWIN M. CLARK, J. I. C.

From and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any State, not appertaining to a court, shall be proved or admitted in any other court or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereunto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of state, the chancellor or the keeper of the great seal of the State, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify under his hand and the seal of his office that the said presiding justice is duly commissioned and qualified: or if the said certificate be given by the governor, the secretary of state, the chancellor, or keeper of the great seal, it shall be under the great seal of the State in which the said certificate is made. And the same records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the State from whence the same are or shall be taken.—Act of Congress of 1804; Prin. Dig. 221.

Clerk and Keeper's Certificate.

STATE OF GEORGIA: I, Samuel Thomas, clerk of the Superior Court,  
Houston County. and keeper of the conveyancing records of said State and county, which conveyancing records do not appertain to a court, do hereby certify, that the foregoing five sheets contain a full and true exemplification, taken from said records, relating to [here state a description of the paper,] as the same appears of entry, in said records, in my office.

Given under my hand and seal of office, this May 1, 1846.  
SAMUEL THOMAS, C. S. C. [L. S.]

Judge's Certificate.

STATE OF GEORGIA, I, Walter Means, one of the Judges of the  
Bibb County. Superior Courts of said State, presiding in the county of Houston, do hereby certify, that Samuel Thomas, whose name appears to the foregoing certificate was, on the day of the date thereof, clerk of the Superior Court, and keeper of the conveyancing records of said State and county, as he is represented to be in said certificate; that the said certificate is in due form and by the proper officer; and that the above signature, purporting to be his, is genuine.

Given under my hand and official signature in Chambers this May 1, 1846.  
WALTER MEANS, J. S. C.
ATTACHMENT AND GARNISHMENT.

Testimonial.
STATE OF GEORGIA.

By his excellency, George W. Crawford, governor and commander-in-chief of the army and navy of said State.

To all whom these presents shall come—greeting:

Know ye, that Walter Means, whose signature appears to his certificate, on the instrument of writing hereunto annexed, was, at the time of signing said instrument, one of the Judges of the Superior Courts of said State, and presiding in the Superior Courts of the Flint circuit, and that his attestation is in due form and by the proper officer. Therefore, all due faith, credit and authority is; and ought to be had, and given, to his proceedings and certificates, as such.

In witness whereof, I have hereunto set my hand, and caused to be affixed, the seal of the State, in the city of Milledgeville, the first day of May, in the year of our Lord, eighteen hundred and forty-six, and in the seventieth year of American Independence.

[L. S.] By the Governor, George W. Crawford.

James Masters, Sec'y of State.

Note.—If the exemplification, &c. sought to be had, relates to "records and judicial proceedings," the certificates of the clerk and judge are sufficient. But, if the exemplification, &c. relates to "records and exemplifications of office-books, which are, or may be kept in any public office, of any State, not appertaining to a court," then, to the certificates of the judge and keeper of said records, or books, must be added the testimonial of the governor.

CHAPTER XIII.

ATTACHMENT AND GARNISHMENT

In the Superior and Inferior Courts.

1. That in case of non-residence, or where both debtor and creditor shall reside without the limits of this State, it shall and may be lawful for such creditor, by himself, his agent, or attorney to attach the property, both real or personal, which may be found in the State, of such debtor, in the same manner, and under the like restrictions, as are or shall be usual in case of absconding debtors, or where the debtor alone resides out of the State.

2. It shall and may be lawful for the judges of the superior, or justices of the inferior court, or any one of them, and also for any justice of the peace, upon complaint made on oath, that his debtor resides out of the State, or is actually removing without the limits of this State, or any county, or absconds or conceals himself, or stands in defiance of a peace-officer, so that the ordinary process of law cannot be served on him, to grant an attachment against the estate of such debtor, or so much thereof as shall be of sufficient value to satisfy the plaintiff's demand and costs; which attachment shall be directed
to, and served by the sheriff of the county where the property may be found, or his deputy, or any constable; and it shall be the duty of such sheriff, his deputy, or any constable, to serve and levy the same, upon the estate, both real and personal, of such debtor, wherever the same may be found, either in the hands of any person indebted to, or having effects of such debtor, and summon such person or persons to appear at the next court to be held for the said county, and to which the said attachment may be returnable, there to answer on oath what he is indebted to, or what effects of such party he hath in hand, or had at the time of levying such attachment, which, being returned executed, the court may by order compel such person to appear and answer as aforesaid: And where any person, in whose hands any debt or effects may be attached, shall deny owing any money to, or having in his hands any effects of such debtor, it shall be lawful for the plaintiff to traverse such denial, and thereupon an issue shall be made up, and the same be tried by a jury; and if found against such garnishee, he, she, or they shall be subject to pay the plaintiff such sum as shall be so found, and the court shall order judgment to be entered thereof against such garnishee, as in other cases: Provided, that the said judge, justice of the inferior court, or justice of the peace, before granting such attachment, shall take bond and security of the party for whom the same may be granted, in double the sum to be attached, payable to the defendant, for satisfying and paying all costs which may be incurred by the defendant, in case the plaintiff suing out such attachment shall discontinue or be cast in his suit, and also all damages which may be recovered against the said plaintiff for suing out the same; which bond shall be returned to the court to which such attachment may be made returnable on or before the last day of the term, and the party entitled to such cost and damages may bring suit, and recover thereon; and every attachment issued without such bond taken, or where no bond shall be returned as aforesaid, is hereby declared to be illegal, and shall be dismissed with costs: Provided always, that every attachment which may be issued as aforesaid, shall be attested by the judge of the superior, or justice of the inferior court, or justice of the peace, issuing the same, and be by the sheriff, or person authorised to serve the same, publicly advertised at the court house of the said county, at least thirty days before the sitting of the court; and if any attachment shall be issued within thirty days of the next court, such attachment shall be made returnable to the court next after the expiration of the said thirty days, and not otherwise; and all attachments issued and returned in any other manner than is herein before directed, shall be, and the same are declared to be null and void; and all goods, chattels, lands and tenements, subject to such attachments, shall be repleviable by appearance and putting in special bail, or by the defendant's giving bond, with good and sufficient security, to the sheriff, or other officer, serving the same; which bond he is hereby empowered to take, compelling the defendants to appear at the court to which such attachments shall be returnable, and to abide by and perform the order and judgment of such court: Provided always, that all goods and effects attached and not replevied, as aforesaid, where the same shall appear to be of a perishable nature, on motion of the plaintiff, or his attorney, the court, or, if not in term time, the judge of the superior, or any two or more of the justices of the inferior court, may, and are hereby authorised and required to order a sale of such perishable property; and the moneys arising from such sales shall be deposited in the clerk's office by the sheriff, or other officer selling the same, to answer the demands of the plaintiff, if established, and the balance, if any, after satisfying such demands and costs, shall, by order of said court, be returned to the defendant or his attorney.
Affidavit under the above section.

STATE OF GEORGIA, 

Before me, James Mack, one of the Justices of Houston County, 

John Doe, who, being duly sworn, deposeth and saith that Richard Roe is justly indebted to deponent, the sum of one thousand dollars, (by note,) and that said Richard Roe is actually removing without the limits of this State, so that the ordinary process of law cannot be served upon him.

Sworn to and subscribed, 
before me, this May 1, 1846. 

James Mack, J. P. 

JOHN DOE.

Note.—The pleader must be careful not to include, in the affidavit, nor attachment, more than one ground of attachment, otherwise the proceedings will be void.

3. If any attachment shall be returned executed, and the property attached shall not be repleived, as aforesaid, the subsequent proceedings thereon shall be the same as on original process against the body of the defendant, where there is a default of appearance; and all such goods and chattels, lands and tenements, not repleived, shall, after the plaintiff has established his demand, be, by order of the court, sold and disposed of, for and towards the satisfaction of the plaintiff's judgment, in the like manner as if the same had been taken under execution; and where any attachments be returned, served in the hands of a third person, it shall be lawful, upon his appearance and examination, in the manner heretofore directed, to enter up judgment as against the original debtor, and award execution against such third person for the monies due by him to the absent debtor, and against such property or effects as may be in his hands or keeping, belonging to such debtor, or so much thereof as will be of value sufficient to satisfy the judgment and costs thereon.

Order of sale.

John Doe 

Richard Roe.

Whereas, on the first day of January, in the year of our Lord eighteen hundred and forty-five, an Attachment, returnable to the Superior Court of Houston county, at the April term, eighteen hundred and forty-five, in favor of John Doe against Richard Roe, for the sum of one hundred dollars, was levied upon a Bay Horse, as the property of said defendant. And whereas, at the present term said Attachment has gone to judgment: therefore it is hereby ordered by the Court, that said Bay Horse, so levied on as aforesaid, be, and he is hereby directed to be sold agreeably to the statute in such case made and provided, and that the proceeds of said sale be applied to said Attachment.

Note.—It is questioned by some members of the profession, whether the issuing a fi. fa. under the judgment, does not destroy the lien upon the property attached? And 2d Murphy's N. C. Rep., 67, is referred to in support of this view.

4. Where an absent debtor hath property lying in different counties, the same shall be liable to attachment, and an original and copies shall issue for each county where the property may be found; the whole to be returnable to the court from whence the first original issued.—Act of 1799; Priv. Dig. 30.

2. Where a debt is not due, and the debtor or debtors is, or are removing, or is or are about to remove, without the limits of this State, and oath being
made by the creditor, his agent, or attorney, of the amount of the debt to become due, and the debtor or debtors is, or are removing, or about to remove, without the limits of this State, an attachment may issue against the property of such debtor or debtors; but the defendant may relieve his property, by giving to the creditor good security to pay the money when due, and cost.—Act of 1816; Prin. Dig. 35.

**Affidavit under the above section.**

**STATE OF GEORGIA.**

Houston County.  

Before me, James Mack, a Justice of the Peace, in and for said county, personally came John Doe, who being duly sworn, deposeth and saith that Richard Roe, of said county, is justly indebted to deponent one thousand dollars, (by note,) which debt is to become due on the twenty-fifth day of December next; and that said Richard Roe is about to remove, without the limits of this State.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

JOHN DOE.

2. Where an attachment shall issue, under and by virtue of the second section of the attachment law, passed on the 18th day of December, in the year 1816, that the plaintiff or plaintiffs in such attachment, shall be, and hereby is, and are authorised to proceed to judgment, in the same manner as though the debt had been due at the time of issuing such attachment, with a stay of execution until the time the said debt should become due; provided the same shall not have become due before entering up judgment.—Act of 1820; Prin. Dig. 36.

1. In any case where a person or persons has been a security for another in a note, obligation, or other instrument of writing, and has been compelled to pay off the same by legal process, or has paid it by being called on by the person or persons holding such note, obligation, or other instrument in writing; and in cases where suit is pending upon any such note, obligation, or instrument in writing, against the principal, and security or securities, or against either or any of them; and in cases where such note, obligation, or other instrument, to which there is or are security or securities, is or are not due, and the principal debtor or debtors, in any such case, is or are removing, or is or are about to remove, or have removed, without the limits of this State or any county; and oath being made by the security or securities, his, her, or their agent or attorney, in fact or at law, of the facts, and of his, her, or their liability on said note, obligation, or other instrument in writing, and that his, her, or their principal is, or are removing, or about to remove, or have removed, without the limits of this State, or any county therein, an attachment may issue against the property and effects of such principal debtor or debtors, in favor of such security or securities; and in cases where the debt has been paid by such security or securities before the issuing such attachment, the said security or securities shall be authorised to proceed to judgment on such attachment, and to recover judgment for the amount to which the person suing out such attachment is entitled; and in case of suing out such attachment by a security or securities, in a case where a suit or suits may be pending, as aforesaid; or on a demand where the note, obligation, or other instrument of writing, is not due, such security or securities shall have a lien upon the property and effects of the principal attached until such property is repleived, or the principal debtor or debtors shall give good and sufficient security to the person suing out such attachment, his, her, or their agent or attorney, in fact, or at law, for the payment of such note, obligation, or other instrument of
writing, when it may or shall become due, or at the termination of said suit or suits; and in case the property shall not be replevied, the person attaching shall be admitted to proceed to establish his demand as though the debt was due, or the suit or suits determined; and the property or effects of the principal debtor so attached by such security or securities, shall be disposed of, in the manner pointed out in the attachment laws of this State, and paid into the clerk's office of the court in which such attachment may be pending, subject to be paid over, by order of said court, to the original creditor or creditors, when such debt shall become due.—Act of 1820; Prin. Dig. 35.

An act to amend an act entitled an act, in addition to, and amendatory of, the several acts to regulate attachments in this State, and to authorize remedies in certain cases, passed December 8, 1820.

Be it enacted, That from and after the passage of this act, that said recited act be so amended, as to give endorser of notes, obligations and all other instruments in writing, the same rights as securities now have by the provisions thereof.—Act of 1842; pamph. p. 24.

**Affidavit under the above Statute.**

STATE OF GEORGIA, 

Before me, James Mack, a Justice of the Peace, in and for said county, personally came John Doe, who being duly sworn, depoeth and saith, that he, the said John Doe, is the security (or endorser) of the said Richard Roe, given to Charles Smith, for the sum of one thousand dollars, upon which note, said Charles Smith has commenced his action of Assumpsit against said Richard Roe, and deponent as his security (or endorser) which action is now pending and undetermined in the Superior Court of said county; and that said Richard Roe is removing without the limits of this State.

Sworn to and subscribed,

before me, this May 1, 1846.

James Mack, J. P.

John Doe.

Note.—A gentleman to whom the Compiler referred the examination of the manuscript of this title makes the following note, respecting attachments issued under the acts of 1816 and 1820, in relation to including in the affidavit, "so that the ordinary process of law cannot be served on him." "The judges, in convention, in the case of Selleck vs. Twesdale, Dudley's Reports, 197 and 198, in relation to Attachments issued under these acts, and respecting this very point, held the following opinion: 'Here it is clear, that no inability to serve the ordinary process need be shown, for no ordinary process could issue; and the writ can as well be granted in the presence of the debtor, or principal, as in his absence; but it must be shown that he is actually removing, or is about to remove, or has removed, so that it is unnecessary.'"

5. In all cases, wherein a suit or suits may have been instituted, on any debt or demand, and pending such suit or suits, the defendant or defendants may place themselves in any or either of the situations in which the suing out an attachment by the laws of this State would be authorised, it shall be lawful for the plaintiff or plaintiffs, his, her, or their agent, or attorney, in fact or at law, to sue out an attachment, notwithstanding the pendency of such suit, or suits aforesaid; and such suit or suits shall not be pleaded in bar to such attachment; but the satisfaction received upon any such attachment may be given in evidence against any such pending suit or suits.—Act of 1820; Prin. Dig. 36.

**Affidavit under the above Section.**

STATE OF GEORGIA, 

Before me, James Mack, a Justice of the Peace in and for said county, personally came
ATTACHMENT AND GARNISHMENT.

John Doe, who, being duly sworn, deposes and saith, that Richard Roe, is justly indebted to deponent the sum of one thousand dollars, by note; that deponent has commenced his action of Assumpsit in the Superior Court of said county, against said Richard Roe, upon said note, which action is now pending and undetermined in said court, and that said Richard Roe is removing without the limits of this State.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

NOTE.—The following note on the Act of 1820 has been furnished the compiler by a gentleman, to whom the examination of the manuscript of this title was referred: "The Act of 1820 gives a remedy where none existed before; a defendant may be held to bail, in the first instance, and yet pending the suit, an attachment may issue against his property, under this act; and the plaintiff, in such case, cannot swear, that 'the ordinary process of law cannot be served upon him,' because he has already been arrested, under process in the case; the words referred to, therefore, should be omitted. Where the defendant has not been held to bail, and he absconds, or conceals himself, &c., the plaintiff may, with safety, include the words in his affidavit; but it would be prudent to sue out bail process, pending the suit, and if the defendant could not be arrested under it, then resort to the attachment. Also, where the defendant has not been held to bail, and is about to remove, &c., although he might be present, and there be no obstacle to prevent his arrest, under bail process, pendente lite, yet the plaintiff may obtain an attachment under this act, by swearing to any of the grounds mentioned in the acts of 1816 or 1820, in which case, it would be improper to swear that 'the ordinary process of law could not be served upon him.'"

1. That from and after the passage of this act, it shall and may be lawful for any person or persons, who may hereafter insure his, her, or their property or effects in any insurance office or company, carried on by agents in the State of Georgia, when any dispute shall or may hereafter arise from any cause whatsoever between the said insurers and the insured, either in relation to the amount of loss claimed, or the justness of the claim or demand, after he, she, or they shall have first complied with the rules and regulations of said insurance office or company contained in the policy, as to notice and loss, to issue an attachment against said company upon refusal or neglect to pay said loss, to the amount claimed by the insured, so that the same do not exceed the amount contained in the policy, in the same manner, and under the like restrictions, as are pointed out in the attachment laws of this State, passed 18th day of February, 1799.

Affidavit under the above Section.

STATE OF GEORGIA, (which corporation is located in the State of New York, conducted by agents in the State of Georgia, on property of deponent, shipped on board the ship Thames, from Savannah, bound to New York, to the amount of ten thousand dollars, at one per cent.: that on the voyage from the port of Savannah to the port of New York, said ship Thames was wrecked, and said property, so shipped and insured, as aforesaid, totally and entirely lost and destroyed; and deponent further saith, that he fully complied, with all and singular, the rules and regulations of said Insurance Company, contained in the policy of insurance, as to notice and loss; and deponent further swears, that he
ATTACHMENT AND GARNISHMENT.

claims from said John Doe, as aforesaid, for the sum of ten thousand dollars, agreeably to said policy of insurance, and that said John Doe, as aforesaid, fail and refuse to allow and adjust said claim, denying the justness of the claim of deponent.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

JOHN DOE.

2. Upon said attachment being issued out as aforesaid, it shall and may be lawful for said plaintiff in attachment to summon the agent or agents of such insurance office or company in writing, to appear at the term of court to which the said attachment shall be made returnable, under the penalty of an attachment for contempt, then and there to answer upon oath what he, she, or they are indebted to, or what effects of said office or company he, or they had in his, or their hands, at the time of issuing said attachment, and hath or have at the time of making his, her, or their return, under oath as aforesaid; and if the said agent or agents shall deny being indebted to, or having in his, her, or their hands, any property or effects belonging to said office or company at the time of issuing the attachment, and at the time of making his return under oath as aforesaid, it shall and may be lawful for the said plaintiff in attachment to traverse such denial in the same manner, and under the like penalty, as is prescribed in the second section of the attachment law as aforesaid.

3. That it shall and may be lawful for the said company against whom said attachment may issue, or their agent or agents, upon the same being issued, to dissolve such attachment; the said company against whom it shall issue giving bond and security to the sheriff or other officer authorised to receive the same, in double the amount claimed, for the eventual condemnation money and all costs, which bond so given shall be, and is hereby declared to be assignable by said sheriff or other officer to the plaintiff in attachment upon the said agent or agents of said company, failing or refusing to pay, or cause to be paid to the said plaintiff or his attorney, within thirty days after the rendition of a final judgment against said company or said claimant, the amount of said judgment and all costs; and the said plaintiff in the said attachment is hereby authorised forthwith to commence an action of debt on said bond against said company and its securities, and shall and may recover judgment on said bond for the amount of said original, finding against said principal and securities as aforesaid, jointly or severally, according to the existing laws of this State, in such cases made and provided.—Act of 1829; Pri. Dig. 39.

Bond under the above Section.

STATE OF GEORGIA, } Know all men by these presents, that we, the
Chatham County } New York Marine and Fire Insurance Company, of the State of New York, by their agent and attorney in fact, Richard Roe, and Charles Smith, of the city of Savannah, in said State, security, are held and firmly bound, unto Robert Welch, sheriff, of said county, and his successors in office, in the just and full sum of twenty thousand dollars; for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas an Attachment, for the sum of ten thousand dollars, at the instance of John Doe, against the New York Marine and Fire Insurance Company,
(agency in Savannah,) returnable to the next term of the Superior Court of said county, to be held in and for said county, on the fourth Monday in October next, has been by said sheriff, levied on a certain lot with its improvements, (No. 1 Anson ward) in the city of Savannah, the property of the said company: now, should the said New York Marine and Fire Insurance Company, well and truly pay, or cause to be paid, to the said plaintiff, within thirty days after the rendition of a final judgment against said company, the amount of said judgment, and all costs incurred, then the above obligation to be null and void; else, of full force and virtue.

New York Marine and Fire Insurance Company,

By their Agent and Attorney in fact; [L. S.]

James Mack; J. P.

Tested and approved, by Richard Roe.

Charles Smith, Sec'y. [L. S.]

That in all civil suits which may have hitherto been instituted, or which shall hereafter be commenced, where bail has been, or shall hereafter be required, and said bail has been or shall hereafter be given, and pending the liability of said bail, he or she shall attempt to remove beyond the limits of the State or county in which the same was required, it shall and may be lawful for the party at whose suit said bail was required, to attach the property of said bail, to answer the suit of said party: Provided, however, that said bail may discharge his property from said levy, by delivering up the body of the principal, according to the laws of this State.—Act of 1838; pamph. p. 33.

Affidavit under the above Statute.

STATE OF GEORGIA;

Houston County.

Before me, James Mack, a Justice of the Peace for said county, personally came John Doe, who, being duly sworn, deposeth and saith, that heretofore, to wit: at the April term of the Superior Court, for said county, eighteen hundred and forty-six, deponent commenced his action of Assumpsit, for the sum of one hundred dollars, against Richard Roe; that deponent required bail, in said action, in the sum of two hundred dollars; that Charles Smith, of said county, became and is bail in said action, and that said Charles Smith, pending his liability, as aforesaid, has attempted to remove beyond the limits of this State.

Sworn to and subscribed, before me, this May 1, 1846. [L. S.]

James Mack, J. P.

JOHN DOE.

1. From and after the passage of this act, in all cases where attachments may issue, under the laws of force, it shall and may be lawful for the same to issue upon the oath of the creditor, or his agent, or attorney in fact or at law, by swearing, to the best of his belief, from the evidence in his possession, and the said agent or attorney in fact or at law shall be, and he is hereby authorised to execute, in the name of the creditor, the bond now required by law.—Act of 1836; Prin. Dig. 41.

Affidavit and Bond, under the above Section.

STATE OF GEORGIA;

Houston County. Before me, James Mack, one of the Justices of the Peace, in and for said county, personally came Abner P. Bowers, attorney at law for John G. Ginn, who being duly sworn, deposeth and saith, to the best of his belief, from the evi-
dence in his possession, that John Doe is justly indebted to said John G. Ginn in the sum of one hundred dollars, besides interest, by Note, and that the said John Doe, as deponent is informed and believes, resides out of this State, so that the ordinary process of law cannot be served upon him.

Sworn to and subscribed, before me, this May 1, 1846;

James Mack, J. P.

ABNER P. BOWERS.

STATE OF GEORGIA,

Know all men by these presents, that we, John Houston County.

G. Ginn, and Richard Roe security, are held and firmly bound unto John Doe, his heirs, executors and administrators, in the just and full sum of two hundred dollars; for the true payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, the above-bound John G. Ginn, by his attorney at law Abner P. Bowers, hath this day prayed an attachment against the said John Doe, which is now about to be sued out, returnable to the next Superior Court, to be held in and for said county, on the fourth Monday in October next; now, if the said John G. Ginn shall satisfy and pay all costs which may be incurred by the said John Doe in case said John G. Ginn shall discontinue or be cast in his suit, and also all damages which may be recovered against the said John G. Ginn for suing out the same, then the above obligation to be void, otherwise to remain in full force.

Tested and approved, by

John G. Ginn. [L. S.]

by his attorney at law A. P. Bowers.

Richard Roe, Sec'ty, [L. S.]

James Mack, J. P.

That from and after the passage of this act, all affidavits upon which attachments or garnishments may issue, now by law, may be made by the non-resident creditor, before the commissioner of the State of Georgia to take acknowledgment of deeds, or before any judge or judicial officers, authorised to administer oaths, or before any notary public, whose attestations shall be sufficient to authorise such other proceedings as may be had in such cases where the creditor is present, or is acting by his attorney at law or in fact, and is now allowed by law.—Act of 1839; pamp. p. 144.

4. In all cases of the issuing of attachments, the formalities and regulations provided in the said attachment law of the year 1799, except as herein excepted and provided for, shall be in full force, which the plaintiff in attachment, his, her, or their agent, or attorney, in fact or at law, is hereby authorised to pursue.—Act of 1820; Prin. Dig. 38.

That it shall hereafter be lawful to issue and serve attachments and bail processes on the Sabbath-day, in the same manner and under the same rules, regulations, and restrictions as are now provided for the issuing and serving of the same on other days; Provided, the person or persons applying for such attachment or bail process shall, in addition to the oath heretofore required to be taken, swear that he apprehends the loss of his debt or some part thereof, unless said attachment or bail process shall issue on the Sabbath-day.—Act of 1834; Prin. Dig. 474.

From and after the passage of this act, all plaintiffs in attachment, their
agents or attorneys at law, or in fact, shall give to the defendant in attachment, bond and security, at the time of issuing the attachment, in a sum at least equal to double the amount sworn to be due or to become due by the attaching creditor.—Act of 1833; Prin. Dig. 40.

Bond given by the Plaintiff.

STATE OF GEORGIA, 

Know all men, by these presents, that we, 

Houston County. 

John Doe, and Richard Roe security, are held and firmly bound unto Charles Smith, his heirs and assigns, in the just and full sum of two thousand dollars, for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this May 1, 1846.

The condition of the above obligation is such, that whereas the above-bound John Doe hath this day prayed an attachment against the said Charles Smith, which is now about to be sued out, returnable to the next Superior Court, to be held in and for the county aforesaid, on the fourth Monday in October next; now, if the said John Doe shall satisfy and pay all costs which may be incurred by the said Charles Smith, in case the said John Doe shall discontinue, or be cast in his suit, and also all damages which may be recovered against the said John Doe, for suing out the same, then the above obligation to be void; else, to remain in full force.

Tested and approved, by

James Mack, J. P. 

John Doe. [L. S.] 

Richard Roe, Sec’ty. [L. S.]

3. All attachments hereafter issued returnable to either the superior or inferior courts of the State, shall be directed to all and singular the Sheriffs and Constables of this State, that an original attachment and copy shall issue, if the plaintiff or plaintiffs shall desire, for any other county or counties, besides the one in which the first original attachment shall be issued, and when a levy or levies, shall be made by virtue thereof, the copy attachments shall be returned to the court to which the first original may be returnable, and such other original shall be returned to the like court in the county in which the levy may be made, and such proceedings shall be had in said court against the property levied upon, or any garnishee, as if the first original attachment had been returned thereto.—Act of 1836; Prin. Dig. 42.

Attachment.

STATE OF GEORGIA, 

By James Mack, a Justice of the Peace for said 

Houston County. 

To all and singular, the Sheriffs and Constables of this State—greeting:

Whereas, John Doe hath made oath, this day, before me, that Charles Smith, late of said county, is justly indebted to him, the sum of one thousand dollars, by note, and that the said Charles Smith, [is actually removing out of the limits of this State,] so that the ordinary process of law cannot be served upon him; and the said John Doe, having given bond and security, in terms of the law in such case made and provided:

I do therefore command you to attach the estate, both real and
personal, of the said Charles Smith, if to be found in your county, or
so much thereof, as shall be of sufficient value to satisfy the demand
and costs of the said John Doe, and such estate, so attached, in your
hands to secure, to answer the complaint of the said John Doe, at the
Superior Court, to be held on the fourth Monday in October next; and
also, that you levy this attachment upon the said estate, both real and
personal, either in the hands of any person indebted to, or having
effects of the said Charles Smith, and summon such person to appear
at the court aforesaid, there to answer, on oath, what he is indebted
to, or what effects of the said Charles Smith, he hath in hand, or had
at the time of levying this Attachment; and that you advertise your
proceedings in the premises, according to law. Hereof fail not, and
have you at said court this writ.

In testimony whereof, I have hereunto set my hand and affixed my
seal, this May 1, 1846. James Mack, J. P. [L. S.]

1. That from and after the passage of this act, that it shall and may be lawful
for any sheriff or constable of this State, to follow with attachment any prop-
erty that may be run anywhere in the State, and if found, to levy on the
same, and bring back to the county from whence said attachment issued for
trial.—Act of 1841; pamp. p. 143.

Levy.

I have levied the within Attachment, upon a [black Horse, the
property of said Charles Smith,] and have summoned Robert Truth as a
garnishee; and also, have advertised my proceedings according to
law; this May 1, 1846. Robert Welch, Sheriff.

7. In all cases the attachment first served shall be first satisfied.—Act of
1814; Prin. Dig. 34.

Advertisement.

All persons concerned are desired to take notice, that I have this
day levied an attachment at the instance of John Doe vs. Charles
Smith, on a [black Horse, the property of the said Charles Smith,] and
have summoned Robert Truth as a garnishee in said case, the same
being returnable to the next Superior Court for the county of Houston,
this May 1, 1846. Robert Welch, Sheriff.

In Justice's Court.

4. Attachments issued and returnable to justices' courts are directed to
"Any lawful constable of the county."—Act of 1811; Prin. Dig. 502.

4. It shall and may be lawful for any justice of the peace, upon complaint
made on oath by any person, that his or her debtor resides out of this State,
or is actually removing without the limits of the same, or any county thereof,
or absconds, or conceals himself, or stands in defiance of a peace officer, so
that the ordinary process of law cannot be served upon him, to grant an at-
tachment against the estate of such debtor, or so much thereof as shall be of
sufficient value to satisfy the plaintiff's demand and cost; which attachment
shall be directed to and levied by any lawful constable of the county where
the property may be found, upon the estate of such debtor wherever to be
found, either in the hands of any person indebted or having effects of such
debtor in their possession, and summon such person or persons to appear
at the court to be held in and for said district, to which said attachment may
be made returnable, there to answer upon oath, what he, she, or they are in-
debted to, or what effects of such debtor, he, she, or they hath or have in their hands, or had at the time of levying such attachment: which being returned executed, the court may, by order, compel such person or persons to appear and answer as aforesaid. And where any person in whose hands such attachment may be levied, shall deny on oath owing any money to, or having in his, her, or their hands any effects of such debtor, it shall, and may be lawful for the plaintiff, or his attorney or agent, to traverse such denial, and thereupon an issue shall be made up, and the same shall be tried at the next term, by a jury of five persons, drawn, empaneled and sworn in like manner as in appeals, but on good cause being shown on oath, the trial may be put off one term at the instance of either party, and no longer, and if found against such garnishee, he, she, or they shall be subject to pay the plaintiff such sum as shall be so found, and cost; and the court shall order judgment to be entered thereupon against such garnishee as against the original debtor: Provided, that such justice of the peace shall, before granting such attachment, take bond and security of the party to whom the same may be granted, in double the sum sworn to by the attaching creditor, payable to the defendant, for satisfying and paying all costs and damages which may be incurred by, or happen to the defendant, in case the plaintiff suing out such attachment should discontinue or be cast in his, her, or their suit; which bond shall be returned to the court, to which such attachment may be returnable; and such attachment shall be tried at or before the second justices' court after the one to which it may be made returnable; and the party entitled to such costs and damages may bring suit and recover thereon; and every attachment issued without such bond being taken, or where no bond shall be returned to the court with the attachment, the said attachment is hereby declared to be illegal, and shall be dismissed with costs: Provided always, that every attachment which may be issued as aforesaid, shall be attested by the justice issuing the same, and shall be by the officer levying the same, publicly advertised at the place of holding the courts in said district; and at one or more public places in the county, at least fifteen days previous to the court to which said attachment may be made returnable; and if any attachment shall be issued within fifteen days of the next court, such attachment shall be returnable to the succeeding court, and shall be tried as heretofore directed. And all goods and chattels, lands and tenements, attached, shall be repleviable by the defendant's giving bond, with good and sufficient security, to the officer levying the same, which bond he is hereby empowered to take, compelling the defendant to appear at the court to which such attachment may be made returnable, and to abide by and perform the order of such court: Provided nevertheless, that all goods and effects attached and not replevied, agreeable to the provisions of this act, where the same shall be of a perishable nature, the said justice or justices of the peace shall, on motion of the plaintiff, his, her, or their attorney or agent, order a sale of the same; and the proceeds of such sale shall be paid into said court, and by them applied to the discharge of the plaintiff's demand, if established, and costs; and the balance, if any, returned to the defendant or his attorney: Provided nevertheless, that all sales of perishable property under attachment, shall undergo the same formalities of other constables' sales under executions; and whenever any attachment shall be returned served in the hands of a third person, it shall be lawful on his or her appearance and examination, in the manner hereinafter directed, to enter up judgment as against the original debtor; and award execution for the money due by him or her to the absent debtor, and against such property or effects as may be in his or her hands or keeping, belonging to such absent debtor, or so much thereof as will be of value sufficient to satisfy the judgment or judgments and costs. And all such goods and chattels, levied on as aforesaid, and not replevied, shall,
ATTACHMENT AND GARNISHMENT.

after the plaintiff has established his demands, be by order of the court, sold and disposed of, for and towards satisfying the plaintiff's judgment, in like manner as if the same had been taken under execution; and where the property so attached and sold as aforesaid, should prove insufficient to satisfy the debt and cost, or where the same shall be of the nature of real estate, then and in that case, it shall be the duty of said justice to issue execution or executions, for the amount of said judgment and cost, or so much thereof as remains unsatisfied. And when any person, as garnishee, returns debts due to the absent debtor, the court shall order the same to be sued for, and when recovered, subject to the order of the court.—*Act of 1811; Prin. Dig. 502.*

**Garnishment under Attachment.**

3. No person, who may be summoned as garnishee, shall be compelled to answer to any attachment out of the county in which such garnishee lived at the time of serving such attachment; and where any garnishee shall return that he has in his hands a note or notes, bond or bonds, or other evidences of debt belonging to the absent debtor, the same shall be forthwith deposited with the clerk of the court in which the attachment is pending, subject to the order of said court; and after the plaintiff shall have established his demand against the absent debtor, the court may, in its discretion, direct the clerk to deliver to the plaintiff, in such attachment, his agent or attorney, such note or notes, bond or bonds, or other evidence of debt, or so much thereof as will be sufficient to discharge the amount of the demand which the plaintiff shall have established against the defendant, taking a receipt therefor, which receipt shall be filed with the papers appertaining to such attachment, and shall be considered as a payment to that amount; unless the plaintiff shall make it appear, that, after due diligence used by him, he was unable to collect the amount; and where the evidence so deposited is of a debt greater than the plaintiff's demand, and will not admit of division, the court shall order the same to be sued for, in such manner as will, in their discretion, best insure recovery; and the money, when collected, to be deposited with the clerk of the court in which the attachment pended, a part to be applied to the discharge of the amount due the attaching creditor, the balance to remain subject to the future order of said court.—*Act of 1814; Prin. Dig. 33.*

1. In all cases arising under the laws of this State which authorize summons of garnishment to be issued, when the garnishee shall return on oath, that he or she hath in hand goods or effects of the debtor, he or she shall state in his or her deposition the value of the same; and the court to which the same may be made returnable, shall proceed to award judgment against said garnishee, for the value of said effects, as stated in said deposition: *Provided nevertheless,* that the said garnishee may discharge said judgment, by delivering to the officer, having the execution in hand, the goods or effects so by him or her deposed to be in his or her possession.

2. The plaintiff at whose instance the said summons shall have been sued out, may make up an issue on said deposition which shall be submitted to a jury, and the said jury shall render a verdict for the value of such goods or effects as may be proved to be in the hands of the garnishee, or for the value of such goods or effects as may by him or her, be admitted to be in hand, and the court shall proceed to give judgment accordingly, which said judgment may be discharged in the manner prescribed in the first section of this act.—*Act of 1830; Prin. Dig. 40.*

1. That in all cases hereafter when any person after being summoned as garnishee, shall die either before or after answer, the executor or executors, administrator or administrators of each person shall be made party by *scire*
Attachment and Garnishment.

facias in the usual way, and shall be bound to answer as such deceased person would have been bound to do provided that such executor or executors, administrator or administrators, shall not be proceeded against until twelve months after his or her qualification as such, and shall be allowed to plead any matter in such proceedings necessary for the protection of himself or the estate he or she may represent, and after he or she shall be made party, the cause shall proceed as it would have proceeded if the garnishee had not died.

2. That in case of the death or removal from office of any such executor or executrix, administrator or administratrix, pending such proceedings, any administrator or administratrix de bonis non, may in like manner, be made party.

—Act of 1839; pamp. p. 146.

1. From and after the passage of this act, in all cases, in any of the courts of this State, where any person or persons shall fail to answer, after being duly summoned as garnishee or garnishees, the court, upon motion of the plaintiff or his attorney, shall pass a rule or order requiring the garnishee or garnishees to answer at such time as the court may direct, or show cause why judgment should not be entered against him, her, or them, for the amount of the plaintiff's demand and costs, which rule shall be served by the sheriff or his deputy; and if the garnishee or garnishees shall fail to answer or show cause at or by the time limited in the said rule or order, the court shall enter judgment against the garnishee or garnishees for the amount of the plaintiff's judgment with costs.

Rule Nisi.

State of Georgia—Houston County.

Present the honorable John J. Lloyd, Judge of said Court.

John Doe vs. Richard Roe.

Rule Nisi against Garnishee.

Attachment returnable to Superior Court, April term, 1846. Principal $100 dollars, besides interest and costs.

It appearing to the Court, by the return of the sheriff, that Robert Truth has been summoned as a garnishee in the above case, which summons required him to appear and answer at the present term of this Court; and said Robert Truth having failed to appear and answer as required by said summons, it is, therefore, on motion of Plaintiff's attorney, ordered that said Robert Truth show cause, at the next term of this Court, why judgment should not be entered against him for the amount of the plaintiff's demand and costs. And it is further ordered, that a copy of this rule be served on said Robert Truth personally, three months previous to the next term of this Court.

A true extract from the minutes of said Court, this May 1, 1846.

James Holdfast, C. S. C.

2. The clerk and sheriff shall be entitled each to the sum of one dollar for the entry and service of such rule or order as is prescribed in the first section of this act, which fees each garnishee shall be compelled to pay before his answer is received by the court; and when the garnishee shall answer to the summons of garnishment, in compliance with the said rule or order, the same proceedings shall be had as if he had answered in due time without the passing of any such rule or order by the court.

3. In all cases whatsoever, either at law or in equity, the plaintiff or complainant shall be permitted to issue summonses of garnishment upon complying with the terms of the law now of force, regulating the issuing of the same, whether the subject matter of the suit be a debt or not.—Act of 1834: Prin. Dig. 41.
2. That in all cases where executions have been issued from a judgment, and removed to any county in this State, that it shall and may be lawful for the plaintiff, his agent or attorney, to take out garnishers before any judge, justice of the inferior court, or justice of the peace, under the same rules and regulations as is now provided for by law.—Act of 1841; pamp. p. 143.

1. From and after the passing of this act, all banks, banking companies, and other corporations in this State, shall be liable to garnishment both in cases of attachment and in cases of common law: and it shall be their duty to answer under their corporate seal by their presiding officer; and in all cases a summons addressed to the corporation and served upon its presiding officer, shall be deemed and held sufficient.

[2. Repealed.]

3. Summons in garnishment shall in all cases be served personally, otherwise they shall not be binding; and in all cases where any corporation shall answer, the subsequent proceedings shall be the same as those now provided by law in cases of other garnishers: Provided, that nothing herein contained, shall be so construed so as to make banks or other corporations liable to be garnished for the salary or salaries, or any part thereof, of any officer or officers of said banks or other corporations.—Act of 1832; Prin. Dig. 473.

Summons of Garnishment.

STATE OF GEORGIA,  
Houston County.  
Robert Truth—You are hereby required, personally, to attend at the Superior Court, to be held in and for said county, on the fourth Monday in October next, to answer upon oath, in an attachment at the instance of John Doe vs. Richard Roe, what you are indebted to said Richard Roe, or what effects you have in your hands, or had at the time of levying said attachment, belonging to said Richard Roe.

Given under my hand and official signature, this May 1, 1846.  
ROBERT WELCH, Sheriff.

Answer of Garnishee.

To the honorable Superior Court.

JOHN DOE  
RICHARD ROE.  
Attachment, &c.

In answer to the writ of garnishment served on respondent in the above-stated case, respondent saith that, [Here state fully, particularly, and at large, all the circumstances of the case.] All which is respectfully submitted.

ROBERT TRUTH, Gar’ee.

STATE OF GEORGIA,  
Houston County.  
Personally appeared before me, James Mack, one of the Justices of the Peace, in and for said county, the above respondent, Robert Truth, who being sworn, deposited and saith that the facts stated in the above answer are true in substance and effect.

Sworn to and subscribed, before me, this May 1, 1846.  
JAMES MACK, J. P.

ROBERT TRUTH.

4. No suit by way of attachment shall abate by the death of either party, where the cause of action would survive to the executor or administrator; but such death being suggested on the record, the cause shall proceed under the restrictions and regulations following: When a plaintiff in attachment shall die, the executor or administrator of such plaintiff shall, within six
months after the probate of the will, and obtaining letters testamentary, or obtaining letters of administration, cause to be issued by the clerk of the court in which such attachment is pending, a scire facias returnable to the next term of the said court, giving notice of his intention to become a party in the place and stead of the deceased testator or intestate, which shall be published at the door of the court-house in the county in which such attachment is pending, by the sheriff of said county, at least twenty days prior to the term at which such scire facias is made returnable; which being done, such executor or administrator may, on motion, be made party plaintiff, and the cause proceed; and where the defendant shall die, scire facias shall issue in manner aforesaid, immediately after the expiration of twelve months, which scire facias shall contain a notice to the legal representatives of the defendant, whether executor or administrator, of the pendency of such attachment, and of the intention of the plaintiff to proceed with the same; which, being published in like manner, it shall be lawful for the plaintiff to proceed with his attachment as if such death had not taken place. Provided nevertheless, that the executor or administrator of the defendant may appear at the return of the scire facias, and upon giving security in terms of the act to which this is amendatory, shall be permitted to plead and defend the said attachment, in the same manner that his testator or intestate might have done.—Act of 1814; Prin. Dig. 33.

Advertisement.

STATE OF GEORGIA, } All persons concerned are hereby notified, that
Houston County. } scire facias, to make John Doe party plaintiff in an
attachment pending in the Superior Court, in which Charles Smith, deceased, was plaintiff, and Richard Roe is defendant, returnable to the next term of the Superior Court, to be held in and for said county on the fourth Monday in October next, is placed in my hands by James Holdfast, clerk of the Superior Court.

Given under my hand and official signature, this May 1, 1846.

ROBERT WELCH, Sheriff.

5. In cases of attachments pending in justices' courts, where either party shall die, such attachments shall not abate; but a notice of the intention of the representatives of the plaintiff, whether executor or administrator, to proceed, being published at the house where such justices' courts are holden, by the constable of the district, ten days before the time at which parties are to be made, such parties shall thereupon be made, and the cause proceed.—Act of 1814; Prin. Dig. 34.

4. Judgment on attachment shall bind no other property than that attached, nor shall the person or property of the defendant, other than that attached, be liable to payment of such judgment, unless the defendant shall come in terms of the law, and be made a party to such attachment: Provided, also, in all such cases of attachments, when the defendants shall return to the county where said attachments are proceeding, and ten days' notice being given to the defendants, personally, by the plaintiff, his attorney, or any legal officer, of the proceedings on said attachments, previous to final judgment on the same; and in all such cases of attachments, when notice shall have been given, and the defendant or defendants shall refuse or fail to appear and defend said suit or suits, personally, or by attorney, then, in all such cases of attachments, the judgments on the same shall not only bind the property attached, but all the property of such defendant or defendants.—Act of 1836; Prin. Dig. 42.
Notice to the Defendant.

STATE OF GEORGIA, \[ Houston County. \]

\[ John Doe: \] You are hereby notified, that an attachment, returnable to the Superior Court, in and for the county of Houston, at the next term of said court, to be held on the fourth Monday in October next, against yourself, in favor of Richard Roe, has been levied on a certain black horse, as your property, which has been advertised agreeably to law. This notice is given, that you may come in and defend yourself in said attachment in terms of the law, in such case made and provided.

\[ Given under my hand and official signature, this May 1, 1846. \]

Robert Welch, Sheriff.

8. No lien shall be created by the levying of an attachment, to the exclusion of any judgment obtained by any creditor, before judgment is obtained by the attaching creditor.—Act of 1814; Prin. Dig. 34.

3. That declarations founded on attachments may be filed at the first term of the court to which the same shall be returnable.—Act of 1838; pamp. p. 168.

Declaration.

STATE OF GEORGIA, \[ Houston County. \]

\[ To the honorable Superior Court of said county. \]

The petition of John Doe, plaintiff in attachment, (which attachment is pending in said court,) respectfully sheweth that Richard Roe, late of said county, owes to, and from your petitioner unjustly detains, the sum of one hundred dollars, besides interest; for that whereas the said Richard Roe, on the first day of January, last past, made his certain instrument in writing, commonly called a promissory note, the date whereof is the day and year aforesaid, his own proper hand being thereto subscribed, and then and there delivered the said note to your petitioner, (and which is now here shown to the court,) whereby, one day after date of said note, he promised to pay your petitioner, or bearer, one hundred dollars, for value received. Yet the said Richard Roe, although so indebted, and to pay the said sum of money often requested, has not paid the same, but the same to pay has wholly refused, and still does refuse, to the damage of your petitioner two hundred dollars. Dated this May 1, 1846. Simon Wake, Plff’s Atty.

Claim.

1. That where any sheriff or constable shall levy any attachment on personal property, claimed by any person not a party to such attachment, such person, his agent, or attorney, shall make oath to such property; and it shall be the duty of such sheriff, or constable, to return the fact of such claim to the court to which the attachment shall be made returnable: and such court shall cause an issue to be joined between the plaintiff and such claimant, and the right of property to be decided on by a jury at the same term, unless sufficient cause be shown to induce the court to continue the same: Provided, the person claiming such property, his agent, or attorney, shall give bond, (to the sheriff or constable serving such attachment,) with security, in a sum equal to the amount
ATTACHMENT AND GARNISHMENT.

of such attachment, conditioned to pay to the plaintiff all damages which the jury, on the trial of the right of property, may assess against such claimant, in case it should appear that such claim was made for the purpose of delay. And every juror on the trial of such claim shall be sworn, in addition to the oath usually administered, to give such damages as may seem reasonable and just to the plaintiff, against the claimant, in case it shall be sufficiently shown that such claim was intended for the purpose of delay only; and it shall be lawful for the plaintiff to enter up judgment, and have execution against such claimant for the amount of such verdict; and where the jury shall find the property not subject to the attachment, the claimant may enter up judgment, and have execution against the plaintiff for the costs by him incurred in establishing his claim.

2. Land or real estate shall not be subject to be attached under or by virtue of any attachment issuing and returnable out of the county in which such land is situate; and in all cases of claims to land, levied on by virtue of any attachment, the proceedings shall be the same as those pointed out by the preceding section for claims to other property, except that such claim shall be returnable to, and tried in the superior court of the county where the land is situate.—Act of 1814; Prin. Dig. 32.

2. In all cases where any property levied on by an attachment shall be claimed, such claimant or claimants shall give bond with security in double the value of the property claimed, to be estimated by the officer making the levy, and the claimant shall be entitled to the possession of such property so claimed, upon giving to the officer levying the attachment, bond with good security in the sum aforesaid, payable to the plaintiff, for the forthcoming of such property at the time and place: Provided, the same be found subject to the attachment; and if the property shall not be produced, the plaintiff or plaintiffs, his, her, or their executors or administrators, may recover on said bond the amount of the judgment obtained on such attachment, including principal, interest and cost, together with all interest and cost accruing after the rendition of judgment: Provided always, that no recovery shall be for more than half of the amount of such bond, with interest thereon from the date of the levy.—Act of 1836; Prin. Dig. 41.

That in all cases of claim, whether the levy be made under attachment or execution, the amount of any bond given for the forthcoming of the property levied on shall be in double the value of such property, to be estimated by the levying officer; and all such bonds shall be made payable to the plaintiff in attachment or execution, who may sue and recover on the same, upon breach of the condition thereof.—Act of 1841; pamp. p. 128.

6. In all cases where any claim shall be interposed for property levied on by virtue of a fieri facias from any of the courts of this State, and pending such claim, the plaintiff shall die, it shall and may be lawful for the executor or executors, administrator or administrators of such deceased plaintiff, upon motion, in the court, where such claim is pending, to be made parties, instantor, and the said case shall proceed without further delay: Provided, the same executors or administrators shall produce in court, their letters testamentary or of administration; and, provided, they shall give to the claimant, or his attorney, twenty days' notice of the said intended application to make such parties. And provided always, in such cases, where there are more than one plaintiff, the cause shall proceed in the name of the survivor, and this act shall not be applicable, except when the last surviving plaintiff shall die while such claim is pending.—Act of 1836; Prin. Dig. 42.

1. From and after the passage of this act, when any attachment returnable to a justice's court in this State shall be levied on land which has been claimed
ATTACHMENT AND GARNISHMENT.

by any person or persons not a party to said attachment, it shall be the duty of the officer levying the same to return the claim papers to the clerk of the next superior court of the county where the land lies, which court shall cause the right of property to be tried in the same manner as in other claim cases.

2. When any attachment as aforesaid shall be levied on any negro or negroes, which may be claimed as aforesaid, it shall be the duty of the levying officer to return the claim papers to the clerk of the next superior or inferior court of the county in which said attachment has issued; and it shall be the duty of the courts aforesaid to cause the right of property to be tried in the same manner as in other cases of claims.

3. The person or persons claiming as aforesaid, shall present their claim in the same manner, and be entitled to a replevy under the same rules and regulations as in other cases of attachments and claims.

4. The jury before the trial of any of the claims aforesaid, shall have administered unto them the following oath, to wit: "You do swear or affirm, that you will give to plaintiffs in attachments against claimants such damages as may seem reasonable and just, not less than ten per cent., provided it shall sufficiently appear that the claim was intended for delay only; so help me God."

—Act of 1828; Prin. Dig. 463.

Note.—It will be perceived, that Claims to property, levied on by attachments, are interposed in the same way, as claims at common law, to wit: the affidavit; the damage bond and the forthcoming bond, are made in the same manner; it is sufficient, therefore, to refer the reader to the title Claim.

1. Every attachment hereafter sued out, the property attached may be restored to the person or persons against whom the attachment may have issued, upon the defendant or defendants giving good and sufficient security to the officer serving the said attachment, in double the debt or demand for which the said attachment may have been issued and granted: or the said defendant or defendants, may file his, her, or their defence to the petition or declaration of the attaching creditor, or creditors, and enter into the same defence as if the property attached had been replevied.—Act of 1816; Prin. Dig. 34.

Note.—To the above statute, the following note has been furnished the Compiler:—

"The act of 1816 contains two provisions for the defence of cases in attachment: first, that the defendant, or defendants, may file his, her, or their defence to the petition, or declaration, of the attaching creditor, or creditors, and enter into the same defence as if the property attached had been replevied; secondly, that any person may act as a friend, give good special bail, and by himself, or attorney, plead and defend the suit, in the same manner as though the defendant was personally present and did it himself. The first provision evidently intends to give the defendant the right to defend, when he personally appears, and not otherwise. By personally appearing and defending the case, he places himself within the reach of the process of the court, and it is but reasonable, that in such case, he should be privileged to defend, as in full and ample a manner, as though he had replevied. The second provision of the act clearly shows this to have been the intention of the legislature, for the privilege given the friend of the defendant, to defend the suit, upon giving good special bail, is co-extensive only with the privilege of the defendant, which he can only exercise when personally present." Any other construction of the statute, it appears to the Compiler, would defeat the attachment laws altogether.

3. In all cases where an attachment may issue against any person absent, that on the trial of the same, any person may act as a friend, give good special bail, and by himself or attorney, plead and defend the suit, in the same manner as though the defendant was personally present, and did it himself.—Act of 1816; Prin. Dig. 35.

3. In all cases of attachment, the property or effects of the defendant or defendants in attachment, may be replevied by his, her, or themselves, his, her, or their agents, or attorneys, in fact or at law, in the manner pointed out in an act, entitled "An act to regulate Attachments in this State," passed on the 18th day of February, in the year 1799.—Act of 1820; Prin. Dig. 36.
ATTACHMENT AND GARNISHMENT.

Replevy Bond.

STATE OF GEORGIA, 

Know all men by these presents, that we, John Doe and Richard Roe, security, both of said county, are held and firmly bound unto Robert Welch, Sheriff, of said county, in the just and full sum of five hundred dollars, for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, an attachment, issued by James Mack, a Justice of the Peace, in and for said county, in favor of Charles Smith, against said John Doe, returnable to the Superior Court of said county, to be held on the fourth Monday in October next, has been levied by said Sheriff, on a certain black horse, as the property of said John Doe; and in which attachment, Robert Truth has been summoned as a garnishee: now, if said John Doe, shall well and truly, be and appear, at said court, and shall, then and there, abide by and perform the order and judgment of said court, touching said attachment, then the above obligation to be void; otherwise, of full force and virtue.

Tested and approved, by

John Doe. [L. S.]

James Mack, J. P.

Richard Roe, Sec'y. [L. S.]

Bond under the Act of 1816.

STATE OF GEORGIA, 

Know all men by these presents, that we, John Doe and Richard Roe, security, both of said county, are held and firmly bound unto Charles Smith, of said county, in the just and full sum of five hundred dollars, for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, said John Doe is indebted to said Charles Smith, of said county, in the sum of two hundred and fifty dollars, which debt is to become due, on the twenty-fifth day of December next: and whereas, said John Doe, being about to remove without the limits of the said State, said Charles Smith, hath prayed out an attachment against him, returnable to the Superior Court, to be held in and for said county, on the fourth Monday in October next, which attachment has been levied by Robert Welch, Sheriff, on a certain negro fellow, named Jacob, about twenty years of age, the property of said John Doe: now, should said John Doe, well and truly, pay said debt, when it becomes due, and all costs, then the above obligation to be null and void; else, of full force and virtue.

Tested and approved, by

John Doe. [L. S.]

James Mack, J. P.

Richard Roe, Sec'y. [L. S.]

Bond under the Act of 1820.

STATE OF GEORGIA, 

Know all men by these presents, that we, John Doe and Richard Roe, security, both of said county, are held and firmly bound unto Charles Smith, of said county,
in the just and full sum of five hundred dollars, for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, said Charles Smith is security (or endorser,) for said John Doe, on a note given to William Rouse, for the sum of two hundred and fifty dollars, due the twenty-fifth day of December last, which note is now in suit, in the Superior Court of said county, against said John Doe, as principal, and said Charles Smith, as security, (or endorser,) which suit is in favor of said William Rouse, and upon which suit said William Rouse will obtain judgment at the October term of said court, for said sum of two hundred and fifty dollars, besides interest; and whereas, said John Doe is about to remove without the limits of this State; and whereas, said Charles Smith hath prayed an Attachment, returnable to the next Superior Court, to be held in and for said county, on the fourth Monday in October next, against said John Doe, as his security, (or endorser,) on said note, which attachment hath been levied on a negro fellow named Jacob, the property of said John Doe; now, should said John Doe, well and truly, pay the amount recovered in said suit, in favor of William Rouse, so in suit as aforesaid, at the termination of said suit, then the above obligation to be void; else, of full force and virtue.

Tested and approved, by

James Mack, J. P. Richard Roe, Sec'y. [L. S.]

6. Where any witness resides out of this State, or out of the county in which any attachment may be pending, and in which his testimony may be required, it shall be lawful for the plaintiff, on filing interrogatories in the office of the clerk of the court where such attachment is pending, and publishing a notice at the door of the court-house of said county, that such interrogatories are filed, to obtain a commission in like manner, as is prescribed by the 23d section of the judiciary act of 1799, for taking testimony in other cases.—Act of 1814; Prin. Dig. 34.

Notice by the Plaintiff.

STATE OF GEORGIA, 

To John Doe: You are hereby notified, that

I have this day filed in the office of the clerk of the Superior Court of said county, interrogatories directed to William Rambo, a material witness in an attachment, returnable to the October term of said court, eighteen hundred and forty-six, and in which I am plaintiff, and you are defendant; and that a commission will be applied for, in terms of the statute in such case made and provided; this May 1, 1846.

Richard Roe, Pl'tt.

6. Any defendant against whom an attachment shall be sued out, under the provisions of this act, may avail himself in his defence of any set-off, properly pleadable by the laws of this State, notwithstanding such set-off may not be due at the time of suing out such attachment, or at the trial thereof.—Act of 1820; Prin. Dig. 36.

5. In all cases of levy by virtue of process of attachment, the officer levy-
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ing the same, shall, under the same rules, regulations and restrictions, reserve and exempt from levy and sale, like articles as are now by the laws of the State, exempted under f. i. e. for the benefit of debtors' families; any usage, custom or practice to the contrary notwithstanding: Provided, that such debtor's family shall not have absconded or removed beyond the limits of the county where such debtor or his family may usually have resided.—Act of 1836; Frin. Dig. 42.

Garnishment at Common Law.

1. In all cases pending in any court of this State, or which may be hereafter commenced, it shall and may be lawful for the plaintiff or his attorney to issue a summons of garnishment, to be directed to any person or persons who may be indebted to the defendant, or who may have any money, effects, property, either real or personal, or any bonds, notes, or other evidences of debt whatsoever, in his, her, or their hands, belonging to said defendant or defendants, requiring said persons to be and appear at the next term of the court in which said suit or suits may be pending, then and there to depose on oath what he, she, or they is or are indebted, to said defendant or defendants, and what money, effects, property, either real or personal, or evidences of debt, belonging to said defendant or defendants, is or was in their hands or possession at the time the summons was served: Provided, the plaintiff or his agent or attorney shall, before issuing the said summons, make an affidavit of the amount of the debt or demand which he, she, or they believe to be due, and that he is apprehensive of the loss of the same or some part thereof unless such summons do issue, and shall file the same in the office of the clerk of the court where the suit is pending, or with the justice of the peace when within his jurisdiction.

2. In all cases where judgment has heretofore been obtained, or may hereafter be obtained, it shall and may be lawful for the plaintiff, or his agent or attorney, to issue summons of garnishment, returnable to the superior, inferior, or justices' court, as the case may be, to be directed, and requiring the garnishee to depose in like manner, as in the preceding section: Provided, that the plaintiff, or his agent or attorney shall, if required by the defendant or garnishee, or by any plaintiff holding a younger judgment or execution, or his attorney, swear that he believes the sum apparently due and claimed on said judgment or execution is actually due; And provided further, that the sheriff, or his deputy, or constable, shall enter on said execution that there is no property of the defendant to be found.

Affidavit of the Plaintiff.

STATE OF GEORGIA, } In person appeared before me, James Mack, a
Houston County. } Justice of the Peace, in and for said county, John Doe, of said county, who being sworn, saith, that he hath commenced in the Superior Court of said county, his action of Assumpsit, against Richard Roe, of said county, for the sum of five hundred dollars, which action is now pending and undetermined in said court, and that he is apprehensive of the loss of the same, or some part thereof, unless summons of garnishment do issue in his behalf; and that deponent believes the whole of said sum is due and owing.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack J. P.

JOHN DOE.
Certificate of the Clerk.

CLERK'S OFFICE, SUPERIOR COURT, MAY 1, 1846.

STATE OF GEORGIA, \{ Houston County. \} I do hereby certify, that John Doe, of said county, hath deposited in my office the original affidavit, of which the above is a copy, and given bond and security in terms of the law, in such case made and provided.

Given under my hand and official signature.

JAMES HOLFEST, C. S. C.

Bond given by the Plaintiff.

STATE OF GEORGIA, \{ Houston County. \} Know all men by these presents, that we, John Doe and Charles Smith, security, both of said county, are held and firmly bound unto Richard Roe, in the just and full sum of one thousand dollars, for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, said John Doe hath commenced his action of Assumpsit, against said Richard Roe, in the Superior Court of said county, for the sum of five hundred dollars, which action is now pending and undetermined in said court; and whereas, said John Doe is about to sue out a writ of garnishment, directed to Robert Truth, of said county, (as a debtor of said defendant,) returnable to the October term of said court, eighteen hundred and forty-six: now, should said John Doe, well and truly, satisfy and pay all costs which may be incurred, in case the said John Doe shall discontinue, or be cast in his said action of Assumpsit, and also all damages which may be awarded against the said John Doe, for suing out said writ of garnishment, then the above obligation to be void; else, of full force and virtue.

Tested and approved, by

James Mack, J. P.

Charles Smith, Sec'y. [L. S.]

Bond to dissolve the Garnishment.

STATE OF GEORGIA, \{ Houston County. \} Know all men by these presents, that we, Richard Roe and Peter Wells, security, both of said county, are held and firmly bound unto John Doe of said county, in the just and full sum of one thousand dollars, for the true payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals and dated this May 1, 1846.

The condition of the above obligation is such, that whereas, said John Doe hath commenced his action of Assumpsit, in the Superior Court of said county, returnable to the October term of said court, eighteen hundred and forty-six, against said Richard Roe, for the sum of five hundred dollars, and has sued out a writ of Garnishment, directed to Robert Truth, (as a debtor of said defendant,) returnable at the term aforesaid of the court aforesaid; and whereas, said Richard Roe desires to dissolve said writ of Garnishment: now, should said Richard Roe, well and truly pay the eventual condemnation money, which may be
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recovered against him, in said action of Assumpsit, so commenced, as aforesaid, and all costs, then the above obligation to be null and void; else, of full force and virtue.

Tested and approved, by

Richard Roe. [L. S.]

James Mack; J. P.

Peter Wells, Sec'y. [L. S.]

3. The said summons, when the same is returnable to the superior or inferior courts, shall be signed and served by the sheriff or his deputy on the garnishee personally, twenty days before the court to which he is directed to appear; and when returnable to the justices' court, shall be signed and served by a constable on the garnishee personally, ten days before the court to which he is directed to appear.

4. When any person shall fail to appear and depose on being summoned as a garnishee, the court, on application, shall proceed against him by attachment for contempt; and when any person shall appear and depose, the after proceedings shall be as in cases of attachment: Provided, that any garnishee deposing and admitting that he is indebted to the defendant, or has in his hands and possession a sufficient amount to pay the plaintiff's demand, shall be deemed a compliance with this act.

5. When any money shall be paid into court, or shall be raised by the sheriff or his deputy, or by a constable under this act, the same shall be paid over to judgments or executions against the defendant, as in other cases, according to the priority established by law.

6. This act shall extend to proceedings in the mayor's court in the city of Augusta and Darien, and the court of Common Pleas and Oyer and Terminer, in the city of Savannah; and the summons shall be signed and served by the city sheriff or marshal, or his deputy, on the garnishee personally, ten days before the court to which said garnishee is directed to appear: And provided also, that the benefits of this act shall be extended to plaintiffs in any suit or judgment which may be pending or rendered in any court hereafter established by the legislature in any corporate town in this State.—Act of 1822; Prin. Dig. 36.

1. When parties plaintiffs, their agents, or attorneys, intending to avail themselves of the benefit of the above (recited) act, shall file his, her, or their affidavit of the amount of his, her, or their debt or demand, in the office of the clerk of the court, or justice of the peace, in which the suit or suits is or are pending, or in which the judgment or execution was obtained on which garnishments are intended to issue, it shall be the duty of the clerk of such court, or such justice of the peace, as the case may be, to deliver to such plaintiffs, their agents or attorneys, a certified copy of such affidavit, which, when placed in the hands of the sheriff, or his deputy, or a constable, in case such certified copy shall be signed by a justice of the peace, shall be sufficient to authorise said sheriff, deputy sheriff, or constable, and they are hereby required forthwith to make out, sign and serve a summons of garnishment on any person or persons who may be indebted to the defendant or defendants in such suit, judgment, or execution: Provided, that the person or persons intended to be garnished reside in the county in which such suit or suits is or are pending, or in which such judgment or execution is obtained.

2. Where persons indebted to a defendant or defendants in any suit pending, or judgment or execution obtained, in any of the courts of law or equity in this State, reside in a different county from the one in which suit is pending, or such judgment or execution is obtained, the parties plaintiffs, their agents or attorneys, shall make and file his, her, or their affidavit, of the amount claimed
to be due in the office of the clerk of the court, or justice of the peace, where such suit is pending, or such judgment or execution is obtained; and it shall be the duty of such clerk or justice of the peace to deliver to such plaintiff, his agent, or attorney, a certified copy of such affidavit, which shall be placed in the hands of the sheriff, deputy sheriff, or constable, as the case may be, of the county in which the person or persons so indebted and intended to be garnisheed may reside; and such sheriff, deputy sheriff, or constable, shall forthwith make out, sign, and serve a summons of garnishment on the person or persons so indebted, returnable to the next superior, or inferior, or justices' courts of the county or district in which such garnishee may reside, under the restrictions and in the manner pointed out in the before (recited) act: Provided always, that such garnishment shall be made returnable to a superior, inferior, or justices' court, as it would have been had such garnishee resided in the county in which the suit is pending, or the judgment or execution was obtained on which such summons of garnishment is founded: and any person or persons so garnisheed shall appear at the court to which such summons of garnishment is returnable, agreeably to the provisions of the before (recited) act.

3. All persons duly summoned as garnishees under this act, or the one to which this is an amendment, shall be bound to make their returns at the term to which such summons of garnishment shall be returnable; Provided, that in all cases when summons of garnishment shall issue, it shall be lawful for the defendant or defendants to dissolve said garnishment, by giving bond and security for eventual condemnation money and cost of suit to the plaintiff, his agent or attorney; and provided also, that in all cases the applicant for summons of garnishment, his, her, or their agent, or attorney at law, shall give bond and security as in cases of attachment.—Act of 1823; Prin. Dig. 38.

That from and after the passage of this act, all journeymen mechanics and day laborers shall be exempt from the process and liabilities of garnishment on their daily, weekly, or monthly wages, whether in the hands of employers or others.—Act of 1845; pamp. p. 38.

CHAPTER XIV.

ATTORNEY IN FACT.

4. All bonds, specialties, letters of attorney, and other powers in writing, which shall be produced in any court, or before any justices in this State, the execution whereof being proved by one or more of the witnesses thereunto, by affidavit or solemn affirmation in writing, before any governor, chief justice, mayor, or other justice of either of the United States, where such bonds, letters of attorney, or other writings are or shall be made or executed, and accordingly certified and transmitted under the common or public seal of such State, court, city, or place, where the said bonds, letters of attorney, or writings are proved, shall be taken and adjudged as sufficient in law as if the witnesses therein named had been present; and such certification shall be sufficient evidence to the court and jury for the proof thereof: Provided, that in
every such affidavit or affirmation there shall be expressed the addition of the party making such affidavit or affirmation, and the particular place of their abode.

5. All sales or conveyances of lands, tenements, hereditaments, which shall hereafter be made by virtue of any letters or powers of attorney, duly executed, which do or shall expressly give power to sell all lands or other estates, and be certified to have been proved as aforesaid, or shall be proved in this State before any justice of the peace by one or more of the witnesses thereunto, shall be good and effectual in law, to all intents, constructions and purposes whatsoever, the same as if the said constituent or constituents had, by their own deeds and conveyances, actually and really sold and conveyed the same: Provided always, that no sale of lands made by virtue of such power or powers of attorney or agency, as aforesaid, shall be good and effectual, unless such sale be made and executed while such powers are in force, and all such powers shall be accounted, deemed and taken to be in force, until the attorney or agent shall have due notice of a countermand, revocation, or death of the constituent.—Act of 1785; Prin. Dig. 163.

Power of Attorney made in another State, to be enforced in this State.

STATE OF SOUTH CAROLINA, \{ Know all men by these presents, that I, \{ Lawrence Earl, of the District and State aforesaid, for divers good causes and considerations, me hereunto moving, have made, ordained and appointed, and by these presents do make, ordain and appoint Ransom Peterson, of said State and District, my true and lawful attorney; for me and in my name, and for my own proper use and benefit, to proceed to the State of Georgia, and there state the object of the Power of Attorney—if it be to collect debts; to convey lands, or other estates; to receive a legacy, or distributive share of an estate; or to transfer stocks, &c. &c., and to do all lawful and proper, for the purposes aforesaid. And to do all other lawful acts and things whatsoever, concerning the premises, as fully, in every respect, as I myself might or could do, were I personally present at the doing thereof. [.And one or more attorneys under him, for the purposes aforesaid, to make, and again at his pleasure to revoke.] Ratifying and confirming, and by these presents allowing, whatsoever my said attorney shall, in my name, lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In witness whereof, I have hereunto set my hand and affixed my seal, this May 1, 1846. \} \}
Signed, sealed and delivered, in presence of \} \}
John Stone, \}
James Mack. \}

Affidavit of Witness.

STATE OF SOUTH CAROLINA, \{ Before me, David S. Harlee, Mayor of \{ the City of Cheraw, in the State and District aforesaid, personally came James Mack, esquire, Merchant and
inhabitant of said city, who being duly sworn, deposeth and saith, that Lawrence Earl signed, sealed and delivered the foregoing Power of Attorney to the said Ransom Peterson, for the purposes therein mentioned, in the presence of this deponent and John Stone, who subscribed the same as witnesses.

Sworn to and subscribed, before me, this May 1, 1846. 
David S. Harlee, Mayor, &c.

James Mack.

Certificate of the Mayor.

STATE OF SOUTH CAROLINA, \[I, David S. Harlee, Mayor of the City of Cheraw, in the State and district aforesaid, do hereby certify, that the above named James Mack, this day appeared in person before me, and made and subscribed, in due form of law, the foregoing affidavit.

In testimony whereof, I have hereunto subscribed my official signature, and affixed the seal of said City, this May 1, 1846.

David S. Harlee,
Mayor of the City of Cheraw.

[L. S.]

Note.—In the foregoing Form, South Carolina, Chesterfield District, is selected as the place where the Power of Attorney purports to have been executed. In the absence of the Governor, the Chief Justice, and of the Judges of the Courts of Common Pleas, of that State, before either of whom, according to the act, the execution of the Power of Attorney might have been proven, resort has been had for that purpose to the Mayor of the City of Cheraw; a Mayor being designated in the act, as one of the officers before whom the execution may be proved. A Power of Attorney, or other deed executed out of this State, so proven and certified by the Mayor under the public seal of the City, is admissible in evidence, in our Courts, without further proof. The same Form is to be pursued if the execution of the Deed be proven before any of the other officers named in the act. Whenever a Deed, or Power of Attorney is executed out of this State, to be used in evidence in our Courts, it should be executed and proven in the manner prescribed by this act, or before the State Commissioner appointed by the Governor of this State, for the purpose of attesting the authentication of Deeds, &c., for the State in which the Deed, &c., is executed or proven.—See Conveyancing. The Form of execution and proof of Deeds, &c., executed in this State, to be used in other States of the Confederacy, depend upon the statutory regulations of the States respectively wherein such Deeds, &c., are to be used in evidence.

Power of Attorney made from one to another citizen of this State, to be used in this State.

STATE OF GEORGIA, \[Know all men by these presents, that I, John Doe of said State and county, for divers good causes and considerations, me hereunto moving, have made, ordained and appointed, and by these presents do make, ordain and appoint Richard Roe, of said State and county, my true and lawful Attorney, for me and in my name, and for my own proper use and benefit, to [here state fully and explicitly the object for which the Power of Attorney is made.] And to have, use and take all lawful ways and means, in my name, or otherwise, that may be found necessary or proper, in the execution of this Power of Attorney. To do all lawful acts and things whatsoever, concerning the premises, as fully, in every respect, as I myself might, or could do, were I personally present at the doing thereof. [And one or more Attorneys under him, for the purposes aforesaid, to make, and again at his pleasure to revoke.] Ratifying and con-
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firming, and by these presents allowing, whatsoever my said Attorney shall, in my name, lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In witness whereof, I have hereunto set my hand and affixed my seal, this May 1, 1846.

Signed, sealed and delivered, in presence of
John Stone,
James Mack, J.P.

John Doe. [L. S.]

Note.—If there be property mentioned in the Power of Attorney, other than that conveyed, whereby it becomes necessary for the Attorney to retain the Power, the Power of Attorney should be recorded in the county where the property is, that is sold under it. If the Power of Attorney is to convey land, the land must be as particularly described, in the Power of Attorney, as is required in the Deed of Conveyance.

Note.—Power of Attorney may be executed before a Notary Public, thus:

STATE OF GEORGIA.} Be it remembered, before me, a Notary

Houston County.} Public, in and for said State and county, duly

commissioned and sworn, this day, came John Doe, who acknowledged the above to be his act and deed.

Given under my hand and notarial seal, this May 1, 1846.

[L. S.]


Note.—A scrawl will not answer, if the Power of Attorney is to be used out of the State, there must be a seal.

Note.—When a deed of conveyance is executed, under a Power of Attorney, the attorney must sign thus:

John Doe,
By his att'y in fact, [L. S.]

Or thus:

Richard Roe,
Att'y in fact for

John Doe. [L. S.]
CHAPTER XV.

CONVEYANCING.

2. That from and after the passing of this act, all conveyances of lands and tenements shall be made by deed of bargain and sale, or by deed of lease and release, or by deed of feoffment, enrolled or registered in the secretary's office of this province, signed and sealed by the party conveying, before two or more witnesses, who shall likewise sign their names to the said deed.—Act of 1760; Prin. Dig. 160.

3. All conveyances of lands and tenements, made and executed, and enrolled, and registered according to the intent and meaning of this act, shall and are hereby declared valid in law, and good and effectual against the party conveying, or husband and wife, and their and every of their heirs and assigns, and against all other persons claiming by, from or under them, or any of them, to all intents and purposes, as if the same had been done by fine or recovery, or by any other way or means, any laws, customs or usages, to the contrary notwithstanding.—Act of 1760; Prin. Dig. 160.

4. That no deed of feoffment, bargain and sale, deed of gift, or other conveyance, of any lands or tenements whatsoever, heretofore made, shall be impeached or set aside in any courts of law or equity for want of attornment or livery and seisin, or enrollment, or for that such conveyance hath been made by way of assignment or endorsement on any other deed or conveyance without other ceremony, nor for any other defect in the form or in the manner of the execution of any such deeds or conveyances, or of the endorsements or assignments thereof, either in the first deed, or in any of the mesne conveyances derived therefrom: Provided nevertheless, That in case of the validity of such feoffment, bargain and sale, deed of gift, or other conveyance of lands or tenements, shall be questioned, the legal and usual proofs shall be made that the rights were and would have been in the person or persons conveying, if such defects had not happened in the form of such deeds or conveyances, or in the manner of the execution of the same as aforesaid.—Act of 1768; Prin. Dig. 161.

The 13th Eliz. chap. 5th, (Sch. Dig. 214) for the protection of creditors, enacts, that every conveyance of real or personal estate by writing or otherwise, and every bond, suit, judgment, and execution, that shall be had or made to delay or defraud creditors and others of their debts and other rights, shall be void as against such creditors, &c., and them only. But that the act shall not extend to any conveyance on good consideration, and bona fide to persons without notice of the fraud.—Prin. Dig. 918.

Note.—Judge Schley makes the following note to the 13th Eliz. ch. 5. "It has been decided in the English courts, and also in the supreme court of the United States, that, 'an unconditional sale, where the possession does not accompany and follow the deed, is, with respect to creditors, on the sound construction of this statute, fraudulent and void.' Edwards vs. Harben, 2 Ter. Rep. 557; Hamilton vs. Russel, 1 Cranch, 309. For a full exposition of this statute, the reader is referred to Roberts on fraudulent conveyances"—Sch. Dig. 216.
The 27th Eliz. chap. 4, (Sch. Dig. 224.) for the protection of purchasers, enacts, that every conveyance of real estate, with the intent to defraud and deceive any person who previously or afterwards purchased the same, shall be void as against such other purchasers, and them only. But the act shall not extend to any conveyance made for good consideration, and bona fide.

And (paragraph 5.) if any person shall make any conveyance of real estate with any clause of future revocation or alteration thereof at his pleasure, and shall afterwards bargain or convey the same estate to any person for a good consideration, (without revoking the first conveyance,) this first conveyance shall be void as relates to the said estate, and as against the second purchasers, and all claiming under them: Provided that no lawful mortgage made bona fide upon good consideration, shall be affected by that act.—Prin. Dig. 918.

2. That all deeds of conveyances, by way of bargain and sale, bona fide, of lands or tenements, and executed under hand and seal in the presence of two or more witnesses, and a valuable consideration paid, that are proved or acknowledged before a justice of the peace, or before the chief justice, or one of the assistant justices, and the said deed is registered by the clerk of the court in the county where such lands or tenements lie, in a book by him to be kept for that purpose, within twelve months from the date of such deed, for which he shall receive four pence per copy sheet of ninety words; then, and in that case, such deed of conveyance by way of bargain and sale shall be, and the same is hereby declared to be, good and valid in law and equity, according to the true intent, construction, and meaning thereof: Provided nevertheless, that nothing herein contained shall extend, or be construed to extend, to prevent any person or persons, who shall prefer the former mode of conveyance by way of lease and release, from using the same, or in the least to impeach or discontinue that form of conveyance, where the same shall be preferred by the parties contracting as aforesaid, on condition only that the said deeds of lease and release hereafter to be made, be duly registered in the county where the lands lie, within one year from and after the date of such deeds.—Act of 1785; Prin. Dig. 162.

That any person or persons, unable to pay his, her, or their debts, who shall at any time hereafter make any assignment or transfer of real or personal property, stock in trade, debts, dues, or demands, in trust, to any person or persons, in satisfaction or payment of any debt or demand, or in part thereof, for the use and benefit of his, her, or their creditor or creditors, or for the use and benefit of any other person or persons, by which any creditor of the said debtor shall or may be excluded from an equal share or portion of the estate so assigned or transferred, such assignment, transfer, deed, or conveyance, shall be null and void, and considered in law and equity as fraudulent against creditors: Provided nevertheless, that nothing contained in this act, shall prevent any person or persons in debt, from bona fide and absolutely selling and disposing of any part or the whole of his, her, or their estate, so the same be free from any trust for the benefit of the seller, or any person or persons appointed by him, her, or them.—Act of 1818; Prin. Dig. 164.

2. And over that, be it further enacted by the authority aforesaid, that no person or persons, of what estate, degree or condition soever he or they be, shall from henceforth bargain, buy or sell, or by any ways or means obtain, get or have any pretended rights or titles, or take promise, grant or covenant to have any right or title of any person or persons, in or to any manors, lands, tenements or hereditaments (except such person or persons, which shall so bargain, sell, give, grant, covenant or promise the same, their ancestors, or they by
whom he or they claim the same, have been in possession of the same, or of
the reversion or remainder thereof, or taken the rents or profits thereof, by
the space of one whole year next before the said bargain, covenant, grant or
promise made) upon pain that he that shall make any such bargain, sale, pro-
mise, covenant or grant, to forfeit the whole value of the lands, tenements or
hereditaments, so bargained, sold, promised, covenanted or granted, contrary to
the form of this act: and the buyer and taker thereof, knowing the same,
to forfeit also the value of said lands, tenements or hereditaments so by him
bought or taken as is above said: the one half of the said forfeitures to be to
the king our sovereign lord, and the other half to the party that will sue for
the same in any of the king's courts of record, by action of debt, bill, plaint or
information; in which action, bill, plaint or information, no essoin, protection,
wager of law, nor injunction shall be allowed.—Sch. Dig. 192.

3. All conveyances of personal property duly executed, and bearing date
after the passage of this act, may be recorded, and shall be admitted as evi-
dence, under the same rules and regulations as govern in cases of real pro-

—Act of 1819; Prin. Dig. 215.

1. That all gifts, grants, bequests, devises, and conveyances of every kind
whatsoever, whether of real or personal property, made in this State, and ex-
ecuted in such manner, or expressed in such terms, as that the same would
have passed an estate tail in real property by the statute of Westminster second
(commonly called the statute de donis conditionibis) be held and construed to
vest in the person or persons to whom the same may be made or executed an
absolute unconditional fee-simple estate.

2. All gifts, grants, feoffments, bequests, devises, and conveyances of every
kind whatsoever, of real or personal property, hereafter made or executed with-
in this State, shall be held and construed to vest in the person or persons to
whom the same are made or executed, an absolute unconditional fee-simple es-
tate, unless it be otherwise expressed, and a less estate mentioned and lim-
ited in such gift, grant, feoffment, bequest, devise, or conveyance.—Act of
1821; Prin. Dig. 246.

5. Estates shall not be entailed.—Act of 1799; Prin Dig. 231.

Deed.

STATE OF GEORGIA, this Indenture, made this first day of May,
Houston County, in the year of our Lord, eighteen hundred and
forty-six, between Charles Smith of the county and State aforesaid, of
the one part, and Richard Roe of the same place, of the other part, wit-
esseth, that the said Charles Smith, for and in consideration of the
sum of one thousand dollars to him in hand paid, at and before the
sealing and delivery of these presents, the receipt whereof is hereby
acknowledged, hath granted, bargained, sold and conveyed, and doth,
by these presents, grant, bargain, sell and convey unto the said Richard
Roe, his heirs and assigns, all that tract or parcel of land, situate, lying
and being in the county aforesaid, [if the lands to be conveyed belonged
to another county originally, so state it in this part of the deed] on Big
Indian Creek, in the tenth district of said county, containing two hun-
dred two and a half acres, more or less, being lot number forty-nine,
originally granted to John Doe; said grant being dated the fourth of
June, eighteen hundred and thirty.

[It is necessary barely to describe the property plainly and substantially, that
is intended to be conveyed, whether it be lands or houses, and lots, or any other real property: it is better in most cases, when the premises can be accurately described without it, to omit a description by metes and bounds.]

To have and to hold said tract or parcel of land unto him the said Richard Roe, his heirs and assigns, together with all and singular, the rights, members and appurtenances thereof, to the same in any manner belonging; to his and their own proper use, benefit and behoof, forever, in fee-simple.

And the said Charles Smith, for himself, his heirs, executors and administrators, the said bargained premises, unto the said Richard Roe, his heirs and assigns, will warrant and forever defend the right and title thereof, against themselves and against the claim of all other persons whatever.

In witness whereof, the said Charles Smith hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered in presence of
John Bryant,
James Mack, J. P.

Charles Smith. [L. S.]

Deed of Gift.

STATE OF GEORGIA, } This Indenture, made this first day of May,
Houston County. } in the year of our Lord eighteen hundred and
forty-six, between John Doe of said county and State, of the one part,
and James Doe, grandson of the said John Doe of the same place, of the
other part, witnesseth that the said John Doe, for and in consideration
of the natural love and affection which he has and bears to his said
Grandson, James Doe, hath given, granted, and conveyed, and does,
by these presents, give, grant, and convey, unto the said James Doe,
his heirs and assigns, all that tract or parcel of land, situate, lying
and being in the tenth district of said county of Houston, (agreeably to
original survey,) known by the number forty-nine, containing two hun-
dred two and a half acres, more or less; originally granted to Samuel
Payne, (said grant being dated the first day of July, in the year of
our Lord eighteen hundred and thirty.

To have and to hold said tract, or parcel of land unto him, the said
James Doe, his heirs and assigns; together with all and singular, the
rights, members and appurtenances to the same, in any manner be-
longing; to his and their own proper use, benefit and behoof, forever,
in fee-simple.

In testimony whereof the said John Doe hath hereunto set his hand
and affixed his seal, the day and year above written.

Signed, sealed and delivered, in presence of
John Bryant,
James Mack, J. P.

John Doe. [L. S.]

Note.—By making suitable alterations, which will readily suggest themselves, the above form will answer for personal property.

Quit-claim Deed.

STATE OF GEORGIA, } This Indenture, made and entered into this first
Houston County. } day of May, in the year of our Lord eighteen
hundred and forty-six, between John Doe of said State and county, of
the one part, and Richard Roe of the same place, of the other part, witnesseth that the said John Doe for and in consideration of the sum of one hundred dollars, cash in hand paid, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth remise, release, and forever quit-claim to said Richard Roe, his heirs and assigns, all the right, title, interest, claim or demand, the said John Doe has, or may have had, in and to lot of land number forty-nine, in the tenth district of Houston county, agreeably to original survey; containing two hundred two and a half acres more or less; with all the rights, members and appurtenances to said lot of land, in any wise appertaining or belonging. To have and to hold the said lot of land to the said Richard Roe, so that neither the said John Doe, nor his heirs, nor any other person or persons claiming under him, shall at any time hereafter, by any way or means have, claim, or demand, any right, or title to the aforesaid lot of land, or its appurtenances, or any part thereof.

In testimony whereof, the said John Doe hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, in presence of

John Bryant,
James Mack, J. P.

John Doe. [L. S.]

Lease.

STATE OF GEORGIA, This Indenture, made and agreed on, this first day of May, in the year of our Lord eighteen hundred and forty-six, between John Doe of said county of the one part, and Richard Roe of said county of the other part, witnesseth that for and in consideration of the rents, covenants, and agreements, hereinafter reserved and contained, and which on the part of the said Richard Roe, his executors, administrators, and assigns, are to be paid, done, and performed, he, the said John Doe, has demised, leased, and to farm letten, and by these presents does demise, lease, and to farm let, unto the said Richard Roe, his executors, administrators, and assigns, a certain lot of land, situate in the tenth district of said county, and known as lot number forty-nine, containing two hundred two and a half acres, one hundred acres of which are well improved and fit for cultivation, together with all the appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the said lot of land, with the appurtenances, unto the said Richard Roe, his executors, administrators and assigns, from the day of the date hereof, for and during the full term of five years next ensuing; and fully to be completed and ended; yielding and paying therefor yearly, on the first day of January, during the said term unto the said John Doe, his heirs and assigns, the yearly rent of two hundred dollars. Provided, that if it shall happen that the said yearly rents, hereby reserved, or either of them, shall be behind, and unpaid by the space of twenty days, next after either of the said days of payment, or if the said Richard Roe, his executors, or administrators, shall assign over, or otherwise part with his Indenture, or the premises hereby leased, or any part thereof, to any person or persons whatsoever,
without the consent of the said John Doe, his heirs, or assigns, first had and obtained in writing, under his or their hands and seals, for that purpose, then and in either of the said cases it shall and may be lawful for the said John Doe, his heirs or assigns, into the said premises hereby leased, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain and re-possess, as in his and their first and former estate or estates. And the said Richard Roe does hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree to and with the said John Doe, in manner following, that is to say, that he, the said Richard Roe, his executors, administrators or assigns, shall and will well and truly pay, or cause to be paid, unto the said John Doe, his heirs and assigns, the said yearly rent of two hundred dollars, in the manner herein before limited and appointed, according to the reservation thereof, and the true intent and meaning of these presents, (except the premises, or some part thereof, shall happen to be burned, blown down, or damned by reason of fire or tempest, or unavoidable accident.) And also he, the said Richard Roe, his executors, administrators, or assigns, shall and will, at his, their, or some of their proper costs and charges, from time to time, and at all times hereafter, during the said term, well and sufficiently repair, uphold and maintain, and keep in repair the said farm, and the premises, with the appurtenances herein before demised, when, where, and as often as occasion shall require, (the casualty of fire, which may burn down or destroy the said farm, its appurtenances, or any part thereof, only excepted.) And the said farm and premises being so well and sufficiently repaired and maintained at the end of the said term, or other sooner determination of this present demise, unto the said John Doe, his heirs or assigns, shall and will peaceably and quietly leave and yield up, (except as herein before excepted.) And also that the said Richard Roe, his executors and administrators, will at all times hereafter, during the said term, hereby demised, bear, pay and discharge all taxes, charges and impositions which shall be taxed, charged, imposed and assessed on the said farm, or any part thereof. And the said John Doe, for himself, his heirs, executors and administrators, does covenant, promise and agree to, and with the said Richard Roe, his executors and administrators, that he, the said Richard Roe, his executors and administrators, paying the yearly rent above hereby reserved, and observing, performing and keeping all and singular the covenants, articles and agreements herein contained on his and their part to be observed, fulfilled and kept, according to the true intent and meaning of these presents, shall and may lawfully and peaceably occupy and enjoy the said farm and premises hereby demised, with the appurtenances, and every part thereof, without any hindrance or interruption whatever by the said John Doe or his heirs, or any person claiming from, by or under them.

In witness whereof the said parties have interchangeably set their hands and seals hereunto, the day and year above written.

Signed, sealed and delivered, in presence of

Charles Smith,
James Mack, J.P.

John Doe. [L. S.]
Richard Roe. [L. S.]
Assignment of a Lease.

STATE OF GEORGIA, Houston County.

For and in consideration of the sum of five hundred dollars, cash in hand paid, the receipt whereof is hereby acknowledged, I have and do by these presents assign and set over to John Doe, of said State and county, without recourse on me, the within Lease, to the only proper use, benefit and behoof of the said John Doe, his heirs, executors and administrators.

In witness whereof, I have hereunto set my hand and affixed my seal; this May 1, 1846.

Signed, sealed and delivered, in presence of
John Stone,
James Mack, J. P.

Richard Roe. [L. S.]

Sheriff’s Deed.

STATE OF GEORGIA, Houston County.

This indenture, made this first day of May, in the year of our Lord, eighteen hundred and forty-six, between Robert Welch, Sheriff of the county aforesaid, of the one part, and John Doe, of the same place, of the other part, witnesseth, that whereas the said Robert Welch, Sheriff, as aforesaid, did lately seize and levy upon a certain tract of land, situate, lying and being in the county aforesaid, known and distinguished as lot number forty-nine, in the tenth district, containing two hundred, two and a half acres, as the property of Richard Roe, by virtue of a writ of fieri facias, issued from the Superior Court of said county in favor of Charles Smith, against said Richard Roe; and after publicly advertising said tract of land, agreeably to law, did put up and expose the same to sale at public outcry, on the first Tuesday in May, instant, at the door of the court-house at Perry, in said county, within the legal hours of sale, when said tract of land was knocked off to said John Doe, at and for the sum of one thousand dollars, he being the highest and best bidder: now, for and in consideration of the said sum of one thousand dollars, in hand paid to him the said Robert Welch, Sheriff, as aforesaid, by him the said John Doe, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said Robert Welch, Sheriff, as aforesaid, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto him, the said John Doe, his heirs, executors, administrators and assigns, all the right, title and interest of the said Richard Roe in said tract of land, of which said Richard Roe was seized and possessed, in and to the same, with all the rights, members and appurtenances thereunto belonging, or in any wise appertaining to his and their own proper use, benefit and behoof, forever, in fee simple.

In witness whereof, the said Robert Welch, Sheriff, as aforesaid, hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, in presence of
John Stone,
James Mack, J. P.

Robert Welch, Sheriff. [L. S.]

That the purchaser of real estate at any Sheriff’s sale either prior or posterior to the passage of this Act, under execution, shall and may have the exe-
cation under which said real estate has or may be sold, together with all the entries thereon, recorded in the office of the clerk of the Superior Court of the county in which said real estate may be situated; and said record of said execution may be read as competent evidence in any cause where the title to said real estate is involved, upon satisfactory evidence of the loss or destruction of the original execution; and the clerk shall have the same fees for recording such executions as he is now entitled to for recording sheriff’s deeds.—Act of 1845; pamp. p. 37.

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Bond for Titles to Land.

STATE OF GEORGIA,

Know all men, by these presents, that I, John Doe, of the county aforesaid, do bind myself, my heirs, executors and administrators, in the just and full sum of one thousand dollars; for the true payment of which, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with my seal, and dated this May 1, 1846.

The condition of the above obligation is such, that whereas said Richard Roe has, this day, made and delivered to me, said John Doe, his certain promissory note, for the sum of five hundred dollars, to become due on the first day of January next; now, should the said Richard Roe, well and truly pay the said promissory note, then I, the said John Doe, bind myself to make, or cause to be made, to said Richard Roe, good and sufficient titles, in fee simple, to and for lot of land number forty-nine, in the tenth district, of Houston county, containing two hundred, two and a half acres, more or less; with all the rights, members and appurtenances, to said lot of land, in any way appertaining and belonging, which, if I, the said John Doe, should do, then this bond to be null and void; else, to remain in full force and virtue.

Tested and approved, by

James Mack, J. P.

John Doe. [L. S.]

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Administrator’s Deed.

STATE OF GEORGIA,

This Indenture, made this first day of May, in the year of our Lord eighteen hundred and forty-six, between John Doe, of the State and county aforesaid, duly constituted administrator of the estate of Richard Roe, late of said State and county, deceased, of the one part, and Charles Smith, of the same place, of the other part, witnesseth, that whereas, by virtue of an order, granted by the honorable inferior court of said county, when sitting for ordinary purposes, previous notice of application having been given, agreeably to the statute, in such case made and provided, on the first Monday in March last, to said John Doe, administrator as aforesaid, to sell a tract of land, belonging to the estate of said deceased, situate, lying and being in the county aforesaid, known and distinguished as lot number forty-nine, in the tenth district, containing two hundred two and a half acres, with the rights, members and appurtenances, thereto belonging. After the said tract of land was duly advertised, in conformity to law, the same was put up and exposed to sale, to the highest bidder, at the door of the court-house, at Perry, in said county, within the legal hours...
of sale, on the first Tuesday in April, last past, by said John Doe, administrator, as aforesaid; when said tract of land, was knocked off, to said Charles Smith, at the price or sum of one thousand dollars, he being the highest and best bidder; now, for and in consideration of the said sum of one thousand dollars, cash in hand paid, to said John Doe, administrator, as aforesaid, by him, said Charles Smith, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; said John Doe, administrator, as aforesaid, hath granted, bargained and sold, and by these presents, doth grant, bargain and sell, unto the said Charles Smith, his heirs, executors, administrators and assigns, the said tract of land, number forty-nine, in the tenth district of said county; with all the rights, members and appurtenances thereto belonging, or in any wise appertaining, unto him, said Charles Smith, his heirs, executors, administrators and assigns, to his and their own proper use, benefit and behoof, forever, in fee-simple.

In witness whereof, said John Doe, administrator, as aforesaid, hath hereunto set his hand, and affixed his seal, the day and year above written.

Signed, sealed and delivered, in presence of
John Stone,
James Mack, J. P.

JOHN DOE, Adm'r
Of Richard Roe, dec. [L.S.]

Deed of Trust.

Note.—The Compiler makes the following extract from a note by Judge Schley to the XX chapter of the Statute of Henry VII:—"In England the husband is not entitled to the real estate of the wife, absolutely; but only to the usufruct during her life, and in some instances to a life estate after her death, when he is called tenant by the courtesy. But in Georgia, the real estate of the wife is absolutely vested in the husband on marriage, the same as her personal goods. Here then is a very important difference, which may create considerable difficulty, when we come to apply the English law and decisions, to cases which may, in the multiplied relations of life, arise out of this difference of tenures. Again, in the State of Georgia, we have no estate's tail; but, whenever such words are used in a conveyance or will, as, according to the English decisions, would constitute such estate, they vest in the first taker an absolute fee simple estate. Now it frequently happens that a father, being desirous of providing for his daughter and her children, something which cannot be disposed of by the husband, uses in his will or deed, what to him and to every man (except to one learned in the technical distinctions of the law) appears to be the plain language of common sense, and gives to his daughter and 'the heirs of her body,' such property as he may intend for her and her children's use. There can be no difference of opinion, as to the intention of the father in using these words, for if he had intended to give the property to the husband's use, he would have done so directly, and by words which would have conveyed such meaning; and yet, although such intention is thus clear and manifest, the judges are bound by the rule of the English law, to declare, that the words 'heirs of her body,' create an estate tail, which, by our law is converted into an estate in fee simple in the wife, and therefore by another rule of our law, absolutely vested in the husband. Here then the intention of the donor is completely defeated, because he was not acquainted with the technical meaning of the words he used, and the property is made to go into the hands of a person who was not the object of the giver's bounty. It is perfectly legal to give property to a married woman and her children, free from the control of her husband; and this may now be done by a proper instrument; either by interposing a trustee, or by giving such property to such woman, and 'her children,' for their sole and separate use, free from the control of her husband. Now, where is the difference to a common observer, between the terms 'heirs of the body' and 'children.' Children are certainly heirs of the body, and heirs of the body can be no others than children. But in legal understanding there is a difference; for the term children means only the immediate issue of the body, and does not extend to the grandchildre, &c., whereas the term heirs of the body, extends to all the issue, and includes the grandchildren, great grandchildren, and so on, ad infinitum, and is therefore an estate tail. Would it not be better to change the law, and suffer the intention in every instance to prevail, no matter by what words such intention is expressed, unless such intention should be contrary to morality and good policy? — Sch. Dig. 149.
Deed.

STATE OF GEORGIA, } This Indenture, made and entered into this
Houston County. } first day of May, in the year of our Lord eigh-
nieen hundred and forty-six, between John Doe, of said State and coun-
ty, of the one part, and Richard Roe of the same place, of the other
part, witnesses that for and in consideration of the natural love and
affection which he, the said John Doe, has and bears to his daughter,
Mary Thomas, of said State and county, wife of Robert Thomas, and for
and in consideration of the sum of five dollars, cash in hand, paid
by said Richard Roe at and before the sealing and delivery of these
presents, the receipt whereof is hereby acknowledged, hath bargained,
sold, granted, and conveyed, and by these presents doth bargain, sell,
grant, and convey unto the said Richard Roe, for the use, benefit, and
advantage, in trust for said Mary Thomas, the children she now has
and those she may hereafter have by her present or a future husband,
free from the control or disposition of her present or a future husband;
all that tract or parcel of land, situate, lying and being in said county, in
the tenth district thereof, (agreeably to original survey,) known and
distinguished in said county by the number forty-nine, containing two
hundred, two and a half acres, more or less; with all the rights, mem-
bers, privileges and appurtenances, to said tract of land, in any wies
appertaining or belonging. [And also a negro fellow named Jacob,
about twenty-five years of age, five feet six inches high, of yellow com-
plexion, and his wife Peggy, about twenty years of age, five feet high,
also of yellow complexion.]

To have and to hold the above-described property, unto him, the
said Richard Roe, in trust for said Mary Thomas, wife of said Robert
Thomas, and all her children as aforesaid, forever, in fee-simple;
free from the debts, liabilities, and control of her present or a future
husband,) to their only benefit and behoof.

In witness whereof the said John Doe hath hereunto set his hand and
affixed his seal, the day and year above written.

Signed, sealed and
delivered, in presence of
John Stone,
James Mack, J. P.

Note—The above form of Deed creates in the mother and children an estate in common.
Another form of conveyance, of this kind, is to create an estate for the sole and separate
use of the wife, “for life, exempt from the marital rights, &c.; and on her decease, to
such child or children as she may leave,” which, perhaps, is the best form.

Release.

STATE OF GEORGIA, } Know all men by these presents, that I, John
Houston County. } Doe, of the State and county aforesaid, for and
in consideration of the sum of five hundred dollars, to me in hand paid,
by Richard Roe of the same place, do, by these presents, remise, re-
lease, and forever discharge, for me, my heirs, executors and admin-
istrators, said Richard Roe, of and from all and all manner of action
and actions, cause and causes of action, suits, debts, dues, sum and sums
of money, accounts, reckonings, bonds, bills, specialties, covenants,
contracts, controversies, agreements, promises, variances, damages,
judgments, executions, claims and demands, of whatever sort, in law
and in equity; which against the said Richard Roe I ever had, now have, or which I, my executors and administrators, hereafter can, shall, or may have, for, upon or by reason of any matter, cause or thing, whatsoever; from the beginning of the world to the day of the date of these presents.

[Any particular transaction may be inserted here if the parties think proper.]

In witness whereof I have hereunto set my hand and affixed my seal, this May 1, 1846.

Signed, sealed and delivered, in presence of

John Stone,
James Mack, J. P.

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John Doe. [L. S.]

Executor's Deed.

STATE OF GEORGIA, Pursuant to the last will and testament of John Doe, late of said county, deceased, after public notice, made in the Georgia Telegraph, on the first Tuesday in May, (being the first day of said month,) in the year of our Lord eighteen hundred and forty-six, I, Richard Roe, duly constituted executor of the last will and testament of said John Doe, deceased, did put up and expose to sale to the highest bidder, at Perry in said county, between the legal hours of sale, for ready money, lot of land number forty-nine, in the tenth district of said county, (agreeably to original survey,) containing two hundred, two and a half acres more or less; when James Wall, being the highest and best bidder, said lot of land was knocked off to him, at and for the price of one thousand dollars: now, therefore, this Indenture, made and entered into this first day of May, in the year of our Lord one thousand eight hundred and forty-six, between said Richard Roe of said county, executor of the last will and testament of said John Doe, late of said county deceased, of the one part, and said James Wall of the same place, of the other part, witnesseth that for and in consideration of the sum of one thousand dollars, cash in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, said Richard Roe, executor as aforesaid, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto said James Wall, his heirs, executors and administrators, all that lot of land situate, lying and being in the tenth district of said county, known and distinguished in the plan of said district by the number forty-nine, containing two hundred two and a half acres more or less; with all the rights, members and appurtenances to said lot of land in any wise appertaining or belonging. To have and to hold said lot of land, unto him, the said James Wall, his heirs, executors, administrators and assigns, forever in fee-simple.

In testimony whereof the said Richard Roe, executor as aforesaid, hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, in presence of

John Stone,
James Mack, J. P.

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Richard Roe. [L. S.]
Ex't of John Doe, dec.
Articles of Assignment.

STATE OF GEORGIA,  
Houston County.  

This Indenture, made this first day of May, 1846, in the year of our Lord, eighteen hundred and forty-six, between John Stiles and Thomas Stokes, of the city of Macon, in the county of Bibb, in said State, merchants and co-partners trading jointly under the firm and style of Stiles & Stokes, of the first part; and John Doe and Richard Roe of the city of Savannah, in the county of Chatham in said State, merchants and co-partners, doing business under the firm and style of Doe & Roe of the second part, witnesses, that the said parties of the first part, for and in consideration of the sum of five thousand dollars to them in hand paid by the party of the second part; the said party of the first part have bargained, sold, assigned, transferred, set over and conveyed; and by these presents, do bargain, sell, assign, transfer, set over and convey unto the said party of the second part, all and singular, the following articles and items of property, to wit: [here set out, fully and at large, each and every article of property conveyed and assigned,] amounting to the sum of ten thousand dollars in the aggregate; together with all the sums of money, either principal or interest, which may be collected from all, or any of the persons, co-partnerships, or firms before mentioned, as the debtors, or in anywise liable, to the party of the first part, by means of the said promissory notes, due bills, judgments, assignments, open accounts, debts, balances, claims and demands, as aforesaid; hereby giving and granting to the said party of the second part, their heirs and assigns full power and authority to ask, demand and receive, sue for and recover, to their own use, the said sum of ten thousand dollars with interest thereon, as aforesaid; and to give all necessary receipts, discharges and acquittances for the same or any part thereof. To have and to hold the said promissory notes, due bills, judgments, assignments, open accounts, debts, balances, claims and demands as aforesaid, unto the said party of the second part; and the individuals composing the said party of the second part; to the only proper use, benefit and behoof of the said firm and individuals, of the second part, their heirs and assigns forever, as tenants in common. In witness whereof, the said party of the first part, have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed and delivered, in presence of

John Stone,  
James Mack, J. P.

John Stiles, [L. S.]  
Thomas Stokes, [L. S.]

Note.—Two witnesses are enough to a deed, and if one of them is a judge of the superior court, justice of the inferior court, justice of the peace, or notary public, it will be admitted to record without any other, or further probate; but if neither should be one of the officers named, the following is the form of the probate, which must be inserted on the back of the deed.

Probate.

STATE OF GEORGIA,  
Houston County.  

Personally came before me, John Stone, who being duly sworn, deposeth and saith, that he saw Charles Smith sign, seal and deliver the within deed for the purposes therein mentioned; that the deponent subscribed the same, as a witness, and saw John Bryant do so likewise.

Sworn to and subscribed, before me, this May 1, 1846.

James Mack, J. P.

John Stone.
CONVEYANCING.

If any person shall take and carry away any paper, document, deed, will, or other writing relating to real or personal estate, with an intention to impair, prevent, or render difficult the establishment of a title to real or personal estate; or mutilate, cancel, burn, or otherwise destroy said paper, document, deed, will or other writing, with the intention aforesaid, such person shall be guilty of simple larceny, and be punished by imprisonment and labor in the penitentiary for any time not less than one year, nor longer than three years.—Prin. Dig. 629.

Sheriff's Bill of Sale.

STATE OF GEORGIA.
Houston County.

Whereas, in obedience to a writ of fieri facias, issued from the Superior Court of said county, at the instance of John Doe against Richard Roe, I Robert Welch, sheriff of said county, did lately seize and levy said writ upon a certain negro fellow, named Jacob, about twenty-five years of age, five feet six inches high, of yellow complexion, as the property of said Richard Roe, and said negro fellow having been duly and publicly advertised, agreeably to law, in the Macon Messenger, did, on the first Tuesday in May, (being the first day of the month,) in the year of our Lord, eighteen hundred and forty-six, at Perry, the place of sheriffs' sales in and for said county, expose said negro fellow at public outcry, when Robert Towns being the highest and best bidder, said negro fellow was knocked off to him, at and for the price of five hundred dollars: now, know all men, by these presents, that I, Robert Welch, sheriff of said county, for and in consideration of the sum of five hundred dollars, cash in hand, paid, by the said Robert Towns at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, do hereby bargain, sell and convey, so far as the office of sheriff authorises me, said negro fellow, Jacob, to him the said Robert Towns, his heirs, executors and administrators, all the estate, right, title, interest, property, claim or demand of the said Richard Roe, in law, equity, or otherwise, whatsoever, of, in, or to the said negro fellow. In witness whereof the said Robert Welch, sheriff, hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, in presence of
John Stone,
James Mack, J. P.

Robert Welch, Sheriff. [L. S.]

Bill of Sale of Personals.

STATE OF GEORGIA.
Houston County.

Know all men by these presents, that I, Lawrence Earl, of the county and State aforesaid, for and in consideration of the sum of five hundred dollars, to me in hand paid, by John Lovemoney, of the same place, the receipt whereof I do hereby acknowledge, have granted, bargained and sold, and by these presents, do grant, bargain and sell, unto the said John Lovemoney, his heirs and assigns, the following property, to wit: [a certain negro fellow, named Jacob, about twenty-five years of age, five feet ten inches high, of yellow complexion, which negro fellow, I warrant to be sound and well, in body and mind, and to be a slave for life.]

To have and to hold, the aforesaid bargained property, to him, the said John Lovemoney, his heirs and assigns forever. And I, the said Lawrence Earl, for myself, my heirs, executors and administrators, all