to appoint commissioners to meet such as may be appointed by North Carolina, for ascertaining and designating the lines of Walton County. The resolution of December 5, 1807, [Vol. II. 682-4], reciting that the commissioners and artists from both States had proceeded in their duty; but that from the differences in result among themselves, and from other causes, the Georgia commissioners appeared not to be confident of the accuracy of the calculations: And therefore resolved, that three commissioners be appointed, to be attended by two artists and the Surveyor General with other instruments, for the purpose of ascertaining satisfactorily this parallel of latitude, requesting of North Carolina her co-operation in this measure; and that in the mean time the people of that County might not be disturbed by any officers of that State. The State of North Carolina not having attended to this, the resolution of December, 1808, [Vol. II. 689.] requests the Governor to renew his application to the Government of that State; and should they refuse or fail to co-operate, the Governor of Georgia is requested to proceed alone.

Nothing, however, appears to have been done in pursuance of these resolutions. On the 15th of December, 1809, [Vol. II. 690.] the Legislature addressed her memorial to the General Government, briefly setting forth the origin and progress of the dispute, and praying the Government of the United States to appoint a proper person to run the dividing line through its whole extent between the two States. There being some unexpected difficulties in this course; and there being now, it would seem, a better prospect of amicable adjustment with North Carolina, the Legislature once more, by resolution of 15th December, 1810, [Vol. II. 634.] invited the attention of the sister State to the subject. The Governor, by that resolution, was authorized to employ Mr. Andrew Ellicott to ascertain the 33d degree of north latitude for the satisfaction of Georgia alone, if North Carolina would not concur. But the Governor was to advise the Executive of North Carolina of this measure, with the assurance, that if that State would co-operate, the observation taken should be final and conclusive. Mr. Ellicott made his observations, which were acquiesced in; and here ended the dispute, as to the parallel of latitude. But the line was not then run out and marked. The resolution of 9th November, 1818, [Vol. II. 1197.] directs the Governor to appoint persons to meet such as may be appointed by North Carolina, to run and plainly mark the dividing line between the States of North Carolina and Georgia. And that that State be invited to co-operate in this measure.

III. ALABAMA.

The prospect of a cession of Creek lands adjoining Alabama, rendering it important for the line to be run, and the Legislature deeming that duty incumbent on the United States, directs the Governor to bring this subject to the attention of the President, and to appoint an artist and one other person to co-operate on the part of the State. [Res. of Nov. 29, 1822, Vol. IV. 21, of Res.]

In 1821, referring to the necessity of having this business accomplished as soon as possible, the Legislature request the Governor to continue his exertions to that end. [Ib. 26.]

At the extra session of June, 1825, supposing an Act for the survey and disposal of the territory lately acquired, bounding on Alabama, would probably be passed before the adjournment, and as Alabama and the General Government had both declined any agency in the measure contemplated, the Governor is required to appoint commissioners to ascertain the boundary line, according to the compact of 1802; duty notifying Alabama and acting with her commissioners if that State should think proper to appoint them. [Ib. Res. p. 50.]

In December, 1826, the committee report what had been done by the Georgia commissioners, Messrs. Blount, Crawford and Hamilton. That Miller's Bend had been ascertained to be the first great bend in the Chattahoochee above the mouth of Uchee creek, from which a right line to Nickajack would not touch the river. But the Alabama commissioners not agreeing to this as the beginning point, and contending for another, those of Georgia proceeded to run the line alone from Miller's bend. Referring to the Constitution of 1798, art. 1, sec. 23, which reserves to Georgia the whole of the Chattahoochee, some of which would be thrown into Alabama by the line proposed by the commissioners of that State, the Legislature concurs in the line designated by the Georgia commissioners and recognizes it as the true line contemplated by the articles of cession of 1802. [Ib. 65.]

Alabama having protested against this boundary in 1828, the committee's report adopted by the Georgia Legislature of that year, reviews the whole controversy, sums up the arguments, adheres to the line as run by Georgia, and expressing kind and amicable feelings for Alabama, indulges the hope she will not persist in what is conceived to be an error. [Ib. 115 of Res.]

That State, however, being still unsatisfied with the line as run, and having passed certain resolutions concerning it, the subject is brought before the Legislature in 1833. They notice the invitations given to Alabama and the United States to co-operate, and
their failure to do so; The action of Georgia alone under circumstances of urgent necessity not admitting of delay; the private titles now held under Georgia up to the line; and finally, that the United States, and not Alabama is interested in the question so far as the private right of soil is concerned. That therefore Georgia cannot consent at present to open the question of boundary, but if Alabama wishes to obtain further information, to satisfy herself, Georgia will afford all facilities in her power; and after the exact points of difference, and the amount of territory involved in the controversy are known, it will be in time for Georgia to consider and determine what course will be most just and proper. [Pam. of 1833, p. 345.]

IV. FLORIDA.

The resolution of December, 1818, [Vol. III. 1291.] authorizes the Governor to appoint two persons to ascertain the true head of the Saint Mary's river, and if it shall appear that the mound thrown up by Mr. Ellicott and the Spanish deputation is not at the place set forth in the treaty with Spain, that they make a special report of the facts to the Governor, who shall thereupon communicate the same to the President of the United States, with a request that the lines may be run agreeably to the true intent and meaning of the treaty. The Governor requested to open a correspondence with the General, and refer to the definition of the terms of Florida in the permanent establishment of the line. [Res. of 29th November, 1824, Vol. IV. 38.] The Executive requested to associate with one under the United States in performing this service. [December 4, 1826. Ib. 66.]

The United States and Georgia commissioners not having been able to agree, the Legislature of 1827, referring to the only point of dispute, the head or source of the river St. Mary, deny that Ellicott's mound marks it truly, or that Georgia is concluded by any supposed acquiescence in that designation, and object to the assumption by Congress of that location as the true one; and requests our delegation in Congress to procure an Act authorizing the line to be run, not specifically as before from that mound, but to ascertain the true point without any regard to previous operations, and run the line according to the treaty of 1795. [Ib. 91.]

The resolution of 1828, referring to the adverse report of the Representatives' committee of Congress, review and oppose the reasonings of that report, denying that the joint American and Spanish commission had any authority to vary the treaty with Spain, if, as the Legislature contend, they did vary it, or any way to conclude the rights of Georgia; and that any supposed acquiescence of this State was under a mistake, which, until discovered, could not have prejudiced her rights. Deducing the claim of Georgia from our old charter, the commission to Governor Wright, [Vol. I. 673.] the definitive treaty of peace with Great Britain, and the treaty with Spain of 1785, recognized and acted on by our own Act of 1783, [Ib. 323] and by our State constitution, and from several other documents, all referring to "the most southern stream" of the Saint Mary, the Legislature contend for the source of the most southern tributary of that river as the true point; and Resolve, that Congress be earnestly requested to pass an Act which shall direct the line to be run without reference to Ellicott's Mound, as required by the Act of Congress of May, 1825, but generally "according to the provisions of the second article of said treaty," and in the event that Congress should refuse to do this, that then the Governor is authorized to appoint commissioners with a surveyor and artist so to run and mark the line. [Vol. IV. 127.]

The Legislature of 1829, regretting that no such Act as requested had been passed by Congress, deem it sufficient to refer to without retreating the full exposition of this subject made at the preceding session. They do not view the land in controversy, but the rights of the State as the main question; and not considering itself invested with the constitutional power to give up or barter away or relinquish its jurisdiction over any portion of the territory or citizens of the State, renew the claims of Georgia as before asserted, and repeat in substance that of the resolutions of the preceding year. [Ib. 135.]

In 1830, the Legislature again sustain, by further argument, the claim of Georgia, repeat the request to Congress so to amend the Act of May, 1826, as to admit of a joint demarkation of the boundary without reference to the terminus designated by Mr. Ellicott; and that, in failure of this attempt, "that the question ought to be carried for decision before the proper judicial tribunal." [Pam. 229.—Prince.

In 1843, the Legislature passed a Resolution authorizing and requesting the Governor to appoint two commissioners to meet such as might be appointed on the part of Florida "for the purpose of settling the boundary between said States." Simultaneously, almost, the Legislature of Florida passed a similar Resolution. Messrs. Joel Crawford and J. Hamilton Cooper, were appointed on the part of Georgia, and Messrs. John Branch and Wm. P. Duval, on the part of Florida. By arrangement, the commissioners met at Bainbridge, in March, 1846, "for the purpose of agreeing upon rules by which
the controversy might be adjusted.” The commissioners disagreeing as to the object of
the mission, those on the part of Florida, insisting that the eastern terminus was not an
open question—the result was a failure to settle or define the boundary line.

In 1817, a report was adopted by the Legislature of Georgia, recommending “the
submission by the two States to the Supreme Court of the United States, of the abstract
question, whether so much of the Treaty of the United States with Spain, in 1795, as
provides for the ascertainment and establishment of a boundary between Georgia and
Spain has been executed in pursuance of the terms of said Treaty. Should the decision
of the Supreme Court determine that that portion of the treaty has been executed by
the commissioners of the United States and Spain—that then, the Governor of Georgia
appoint two commissioners, to unite with an equal number on the part of Florida to
mark the line from Ellicott’s mound, to the junction of the Flint with the Chattahoochee.
In the event of the decision that the boundary has not been ascertained and established
—then a joint commission to be appointed to ascertain “the head of the St. Mary’s
river,” whence the line should be run. In December, 1848, the Legislature of Florida,
without noticing the action of Georgia, passed Resolutions, requiring the Attorney Gen-
eral “to file a bill in the Supreme Court of the United States, to confirm and quiet the
boundary line between the State of Florida and the State of Georgia.” This is the pre-
sent condition of the question.

CESSIONS TO THE UNITED STATES.—1791. 1847.

An Act to empower the Senators, or one Senator and two Representa-
tives, from this State, in the Congress of the United States, to
sign, seal, and deliver a Deed of Cession of the Lighthouse on
Tybee Island, and five acres of land belonging thereto, to the
Prince, 150.

An Act to amend an Act* entitled “an Act to carry the twenty-third
section of the first article of the Constitution into operation, so
far as relates to the powers vested by the same in the honorable
Abraham Baldwin, James Jones, and Benjamin Taliaferro,
Esqrs. commissioners on the part of Georgia, to make a cession
of part of the unlocated territory of said State to the United

An Act to ratify and confirm certain articles of agreement and cession
entered into on the 24th day of April, 1802, between the Commission-
ers of the State of Georgia on the one part, and the Commission-
ers of the United States on the other part.—Approved June 16,

An Act to cede to the United States jurisdiction over four acres of
Land on the Southern extremity of St. Simon’s Island, and six acres
of Land on the Southern extremity of Cumberland Island †for the pur-
pose of erecting Lighthouses.—Approved December 10, 1804.

*Vol. I. 584. Superseded by this.
†See Resolution of June, 1807, on this subject. Vol. II. 675.


An Act to cede jurisdiction over five acres of Land on Wolf Island or part thereof across the Creek at the West end of said Island, for the purpose of erecting a Lighthouse or Beacons.—Approved Dec. 14, 1819. Vol. III. 434. Prince, 155.

An Act to cede to the United States of America the Interest of the State in, and its Jurisdiction to, certain Sites on the Savannah River, whereon Beacons have been erected.—Approved Dec. 22, 1820. Vol. IV. 244. Prince, 155.

An Act to cede to the United States Jurisdiction over Marsh Island, for the purpose of erecting Beacons.—Approved May 10, 1821. Vol. IV. 244. Prince, 155.

An Act assenting to and confirming a purchase made by the United States of a piece of Land, situated near Augusta, Georgia, and for ceding the Jurisdiction over the same.—Approved Dec. 26, 1826. Vol. IV. 261. Prince, 155.

An Act assenting to and confirming a purchase which is about to be made, or may be made by the United States of a piece of land situated near Augusta, Georgia, and for ceding the jurisdiction over the same.—Assented to Dec. 27, 1843. Pam. 68.

An Act "to give the consent of the State of Georgia, to a purchase by the United States of a lot of land in the City of Savannah, for the use of a Custom House, and to cede the jurisdiction of the same."—Approved Nov. 18, 1845. Pam. 24.

An Act to cede to the United States of America all the right, title and interest of the State of Georgia, in, to and over a reserve of twenty acres of land on the Island of Cockspur, in the Savannah river; and also the jurisdiction thereof.—Approved Dec. 27, 1845. Pam. 97.

An Act to give the consent of the State of Georgia to a purchase made by the United States, of a lot of land in the City of Savannah, for the purpose of erecting a Custom-House theron; and also,
COAST SURVEY—1847.

Sec. 1. Entering on lands.  | Sec. 4. Costs.

An Act to authorize persons engaged in the United States Coast Survey, upon the Coast of Georgia, to enter on lands within this State for the purpose of said survey, to protect the operations of the same from injury and molestation; to ascertain the mode of assessing damages caused to any property in the progress of the same, and to provide for the punishment of offenders against the provisions of this Act, and for other purposes.—Approved Dec. 30, 1847. Pam. 59.

Whereas, according to the provisions of an Act of Congress, passed February 10, 1807, and Acts supplementary thereto, and in pursuance of the same, the operations of the United States Coast Survey have reached the coast of Georgia; and whereas, it is important that such operations should be carried on without hinderance or injury, and that certain privileges should be granted to persons employed in the same, without detriment nevertheless to the citizens of Georgia:

1. Sec. I. Be it therefore enacted, That from and after the passing of this Act, any and every person employed under and by virtue of an Act of the Congress of the United States, passed the 10th day of February, 1807, and the supplements thereto, concerning the United States Coast Survey, may enter upon lands and clear and cut timber within this State upon the same, for the purpose of exploring, surveying, triangulation, levelling, or doing any other act requisite to effect the object of said Act of Congress, without being considered as a trespasser, provided no unnecessary injury be done thereby.

2. Sec. II. If the parties interested, namely, party or parties
representing the Government in the United States Coast Survey on the coast of Georgia, and the owners or possessors of the land so entered upon, and to which damage may have been done, cannot agree together upon the amount to be paid for the damages caused by doing any of the acts aforesaid, either of them may complain in a summary manner to the nearest Justice of the Peace for the district of the County where the damages may have been committed, who shall associate with himself two disinterested freeholders of the said County, one to be named by each party interested, who shall, upon hearing the parties, and with or without view of the premises, as they may determine, proceed to assess and award any damages which may have accrued to the owners or possessors of the land so entered upon: Provided, nevertheless, that the party complaining as aforesaid shall serve upon the opposite party interested ten days notice in writing of the time and place when and where said complaint is to be heard, and the name of the freeholder by him selected.

3. Sec. III. The said Magistrate and freeholders shall, without unreasonable delay, file in the office of the Clerk of the Inferior Court of the County where the said complaint may have been heard, a report of their proceedings, which report shall be conclusive against the parties and be evidence of their assent to the same, unless either of them shall, within ten days after the filing of the said report, file a general or special objection to the same in the office of the said Clerk, of which the other party shall have notice: whereupon an issue shall be made up and a trial had at the next term of the Inferior Court for the said County, in the same manner in which civil cases are tried, except that the judgment shall be rendered and the damages assessed at the first term.

4. Sec. IV. Any person so entering land as aforesaid, for the purposes aforesaid, may tender to the party injured sufficient amends for any damage done upon the said land; and if upon the examination before the Justice of the Peace and freeholders aforesaid, or upon the trial before the Inferior Court, the damages finally assessed shall not exceed the amount so tendered, the person who has so entered and made tender of amends shall recover his costs.

5. Sec. V. The Justice of the Peace and freeholders aforesaid, upon complaint made to them as aforesaid and decision given, shall receive [the] same costs to which by law Justices of the Peace are entitled in a civil case from summons to judgment; and upon the trial in the Inferior Court the costs shall be taxed by analogy to the bill of costs in said Court established by law.

6. Sec. VI. That if any person or persons shall willfully or wantonly injure, deface or remove any signal, monument, building, or any appendage thereto, used or constructed in the State of Georgia, under and by virtue of the Act of Congress aforesaid, he and they shall be liable to indictment for the same under this Statute, for each and every such offence, and upon conviction shall be sentenced to pay a fine of fifty dollars, one-half of which shall go to the prosecutor and the remainder shall be appropriated according to the laws of this State regulating the disposal of such fines: and he and they shall also be liable for all damages sustained by the United States of
COINS AND CURRENCY.*

Sec. 1. Pass by tale.

" 2. Value of dollar.

Sec. 3. Public Accounts.

" 4. Verdicts.

An Act to prevent the clipping and mutilating the Current Coin of this State.—Approved Feb. 3, 1789. Vol. I. 59.

Whereas, the most mischievous consequences are daily experienced by the good citizens of this State, from the nefarious practice of clipping and mutilating the circulating specie thereof, to prevent the same,

1. Sec. I. Be it enacted, &c. That all gold and silver coin of full weight shall pass current by tale within this State.

[Sec. II. prescribing a penalty for clipping coin, repealed by Act of Dec. 29, 1847. Pam. 206.†]

An Act for regulating the rates of Coin.—Approved Dec. 29, 1794. Vol. I. 60.

2. Sec. I. After the first day of July next, a Spanish milled dollar shall pass and be received in payment of all debts which may be contracted by or with any person or persons within this State, and in payment of all taxes that may be laid or assessed after the present session, at the rate of eight shillings and four pence, † and all other coins in the same rate and proportion: Provided, nevertheless, that this Act shall not be so construed as to affect any contract or money transaction, made or entered into prior to the first day of July, 1795; And provided also, that nothing herein contained shall be so construed as to reduce or alter the fees or salaries of the several officers within this State.


3. Sec. I. From and after the first day of March, 1796, all ac-

†For offences in reference to coin, see "Penal Laws," secs. 143, 144.
‡The Act of 1786 for the emission of £50,000 in paper money made it a legal tender at the rate of 4 shillings and 8 pence to the dollar, and 37 shillings and 4 pence to the half Johanna of Portugal. Vol. I. 389, 84. Prince.
CONVEYANCES AND REGISTRY—1755.

Sec. 1. Where and when recorded.

Sec. 37. Time extended.

Sec. 2. Fraudulent Conveyances.

Sec. 38. Commissioners in other States.

Sec. 3. Former records.

Sec. 39. Powers.

Sec. 4. Sales by agent or attorney.

Sec. 40. Oath.

Sec. 5. Sales by husband and wife.

Sec. 41. Sales by Academy Commissioners.

Sec. 6. Mode of relinquishment.

Sec. 42. Time extended.

Sec. 7. Conveyance valid.

Sec. 43. Recorded deeds evidence.

Sec. 8. Record in Secretary's office.

Sec. 44. Time extended.

Sec. 9. Two or more mortgages.

Sec. 45. Recorded at any time.

Sec. 10. Dower in mortgaged land.

Sec. 46. Two deeds—which takes.

Sec. 11. Formal defects.

Sec. 47. Gift of slaves.

Sec. 12. Continuation of Act.

Sec. 48. Witness dead.

Sec. 13. Formal defects.

Sec. 49. Recorded at any time.


Sec. 50. Also bills of sale.

Sec. 15. Relinquishment of Dower.

Sec. 51. Date of record omitted.

Sec. 16. Foreign powers of attorney, &c.

Sec. 52. Censals and vice consuls.

Sec. 17. Sales by attorney.

Sec. 53. Witness to any contract.

Sec. 18. Papers lost during war.

Sec. 54. Certificates evidence.

Sec. 19. Time of Registry extended.

Sec. 55. Tax Collector's deeds.

Sec. 20. Entails prohibited.

Sec. 56. Witness dead, insane or removed.

Sec. 21. One witness or clerk.

Sec. 57. Attestation of Clerk.

Sec. 22. Fraudulent assignments.

Sec. 58. Record allowed.

Sec. 23. Bills of sale, &c.

Sec. 59. Dower barred by Sheriff's sale.

Sec. 24. Fee-tail vests fee-simple.

Sec. 60. Execution of fi. fa.

Sec. 25. Fee-simple unless restricted.

Sec. 61. Improper records—copies.

Sec. 26. Affidavit not signed.

Sec. 62. Marriage settlements, 12 months.

Sec. 27. Record not in time.

Sec. 63. Future, 3 months.

Sec. 28. Time extended.

Sec. 64. Purchaser and creditor.

Sec. 29. Dower barred in lands sold.

Sec. 65. Probate before Clerk.

Sec. 30. Mortgages, probate.

Sec. 66. Official attestation.

Sec. 31. Time of record.

Sec. 67. Act of 1838 extended.

Sec. 32. Future probate.

Sec. 68. Execution in other States.

Sec. 33. Unrecorded, lose lien.

Sec. 69. Probate and attestation of Clerk.

Sec. 34. Mortgage made out of State.

Sec. 70. Probate not recorded.

Sec. 35. Lien lost, unless recorded.

Sec. 71. Probate before Not. Public.

Sec. 36. Recorded deeds evidence.

Sec. 72. Perjury.

*For the process of foreclosure of mortgages, see "Judiciary," secs. 358, 359.

As to fraudulent conveyances to avoid payment of tax, see "Tax," sec. 15.

See also, as to the liability of mortgagee for tax, sec. 15.

For Act declaring deeds to estrays and vacant lots levied on and sold under certain circumstances void, see "Penal Laws," sec. 372.

For Acts providing for the record of Judicial proceedings, see title "County Funds and Records," sec. 29.

For Act in relation to the Registry of Births, see "County Officers," sec. 34.

Whereas, many inconveniences may attend the want or neglect of recording in the public offices of this province all conveyances of lands, negroes, and other chattels, or mortgages of the same:

1. Sec. 1. Be it enacted, That all conveyances of lands, tenements, negroes, and other chattels, or hereditaments whatsoever, or mortgages of the same, that were made before the passing of this Act, shall be registered in the register of the records' office of this province, within three months after the publishing of this Act, except such as have been or may be hereafter executed in Europe, which shall be registered as directed by this Act, within a twelve month and a day; and except such as have been or may be hereafter executed in the West India Islands, or on the American continent, north of South Carolina, which shall be registered by this Act within six months; and such as may be hereafter made within this province be registered within the space of sixty days† from the date of the several deeds, conveyances, or mortgages; in failure of which, all such as are lawfully and regularly registered as aforesaid, shall be deemed, taken, and construed to be prior, and shall take place and be recoverable in law before any and every deed, conveyance, or mortgage, which has not been lawfully registered as above, any law, custom, or usage to the contrary notwithstanding.‡

For Acts in relation to the recording of Sheriff's and Constables' Bonds, see "County Officers," secs. 71, 73.
Administrators' and Guardians' Bonds, see "Executors, &c.," sec. 120.
For Acts requiring the records to be kept in well-bound books, see "County Funds and Records," sec. 2.
For Act in relation to what amounts to a Seal, see "Evidence," sec. 29.
For Act authorizing the Registry of final receipts of Executors, Administrators and Guardians, see "Executors, &c." sec. 126.
For Act authorizing Religious Societies to hold Real Estate, see "Religious Societies," sec. 1.
For Act prohibiting oral evidence to convert a Deed into a Mortgage, see "Evidence," sec. 28.
For Act authorizing Foreigners to take mortgages, see "Foreigners," sec. 5—and deeds, sec. 9.
For proceedings where contracting vendor or vendee of land dies, see "Executors, &c.," secs. 71, 83, 84.
For Act in relation to "Survivorship among joint Tenants," see "Judiciary," sec. 293.
For Act declaring sales and mortgages of land before the grant issues void, see title "Land," sec. 116, 129.

*As all Acts must govern the contracts made under them, it seems difficult to assign any period when those relating to conveyances may be considered as obsolete. Personal contracts, indeed, are generally disposed of by the Statutes of Limitation; but questions of title, especially to real estate, very frequently depend on the soundness of former titles; so that real property is held under not only recent Acts, but under those that have been in force at various periods heretofore. For these reasons, it is deemed best not to mutilate the Statutes on this subject, but to present them entire.—Priner.
†Mortgages must now be recorded within three months (Act of 1827, sec. 30,) and deeds within twelve months. (Act of 1785, sec. 14.) See also Acts of 1837 and 1839.
‡See secs. 31, 32, et seq. as to the recording of mortgages and the effect of a failure. See also Act of 1837, sec. 4, when there are two deeds, sec. 46 of this title.
And in order to discourage and deter all and every person and persons from making any fraudulent conveyances or mortgages:

2. Sec. II. *Be it enacted*, That if any vendor or mortgager of lands, tenements, negroes, or other chattels, or hereditaments, within this province, shall presume to execute a second or other deed of conveyance, or sale of the same lands, tenements, negroes, or other chattels, or hereditaments, other than the first vendor of such lands, tenements, negroes, or other chattels, or hereditaments, or a second or other deed of mortgage, without having taken notice in the said deed of mortgage of the first or prior mortgage or mortgages with which the said lands, tenements, negroes, or other chattels or hereditaments, stand charged at the time of executing the said deed, all and every person and persons so offending, shall be tried and punished, and be subject to the like forfeitures and penalties as the laws of that part of Great Britain, called England, have provided against all such persons as shall execute deeds of mortgage without taking notice of all prior mortgages made.*

Sec. III. [Requiring wills to be recorded in three months, repealed by subsequent legislation.]

3. Sec. IV. All deeds of conveyances, mortgages, wills or writings that have been regularly entered in the former office of record of this province, shall be deemed lawful to all intents and purposes, any thing in this Act or any other Act contained to the contrary notwithstanding.

An Act for confirming Sales of Land in the province of Georgia by *Attorneys or Agents, &c.*—†Approved February 8, 1757. Watkins' Digest, 48.

4. *Whereas*, divers persons living out of this province, are and have been owners of lands within the same, which persons have usually appointed attorneys to sell and dispose of such lands: to the end therefore that those who have so purchased, may from henceforth be secured in their titles and estates,

*Be it enacted*, That all sales of lands, tenements, and hereditaments within this province, heretofore made by any attorneys or agents, who have been appointed and empowered by any person or persons having a right so to do, are and shall be deemed and adjudged good and effectual in law, to all intents, constructions and purposes whatsoever, as fully as if the said owner or owners of such lands had by their own seals and conveyances actually and really sold and conveyed the same; and all and singular the lands, tenements and hereditaments sold and conveyed as aforesaid shall be and remain to such purchasers respectively, for such estate or estates, as the owner or owners, so employing his or their attorneys or agents, had or ought to have had therein.

Secs. II. and III. Re-enacted in 1785; see secs. 16 and 17, of this title.

*See sec. 9 of this title.
†See secs. 16 and 17 of this title.

An Act to enable Feme-Couverts to convey their Estates, and for confirming and making valid all conveyances and acknowledgments heretofore made by Feme-Couverts.—Approved April 24th, 1760. Vol. I. 112.

Whereas, the usual method of conveying lands and tenements in England, by feme-couverts, is by fine or recovery, which methods have not been practised in any of his Majesty’s American colonies: And whereas, instead thereof, it has been customary in the conveyances of lands by husband and wife, for the wife to acknowledge her consent before a Judge or Justice, being first privately examined by the said Judge or Justice, whether she acknowledged the same voluntarily and freely:

5. Sec. I. Be it therefore enacted, That all alienations and conveyances whatsoever, which have at any time heretofore in this province been made, either by husband and wife, having jointly signed a deed of conveyance before witnesses, or by the acknowledgment of the wife of her consent to such a sale of lands and tenements, before any of the then Justices or Magistrates, shall in such cases be valid in law, and good and effectual against the husband and wife, their heirs, and assigns, and against all other person or persons whatsoever, claiming under the said husband and wife, or either 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 in the law.

And whereas, It is necessary to secure the property of future purchasers of lands and tenements, as well as to prevent husbands disposing without the consent of the wife, what of right did or would belong to them: And whereas, also, the method practised in England in these cases would prove exceedingly troublesome and very expensive to the inhabitants of this province:

6. Sec. II. Be it therefore enacted, 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; and where a feme-couvert has, or may have any right in part or the whole of the lands and tenements to be conveyed, and the said feme-couvert doth willingly consent to part with her right, by becoming a party with her husband in the sale of such lands and tenements, in such cases as these, the said feme-couvert shall become a party with her husband in the said deed of conveyance, and sign and seal the same before the Chief Justice, or assistant Judges, or one of his Majesty’s Justices of the Peace, for the parish where such contracts shall be made, declaring before the said Judge or Justice that she has joined with her husband in the alienation of the said lands

*This Act amended by Acts of 1826, and 1842 which bar the widow of dower in all lands conveyed by the husband or under legal sale during his life-time, see secs. 29 & 69 of this title. See also sec. 10, as to widow’s dower in lands mortgaged.
Conveyances

Be been ~ and D', and ' viz. Relinquished dower.

Such deeds recorded by the Secretary's office, to be in my property to be sealed, and delivered to the above instrument of writing, passed between D E and C D; and I do hereby renounce all title or claim of dower that I might claim or be entitled to after the death of C D, my said husband, to or out of the lands or tenements therein conveyed. In witness whereof, I have hereunto set my hand and seal. And the said Judge or Justice shall, and is hereby required to endorse upon the deed the acknowledgment of the same feme-covert made before him, and to sign the same, and shall receive two shillings and sixpence as a fee, for his endorsing and signing the same, and no more.

7. Sec. III. 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.

An Act to prevent fraudulent mortgages and conveyances, and for making valid all deeds and conveyances heretofore made, with respect to any defect in the form and manner of making thereof, with certain restrictions.—Approved Dec. 24, 1768. Vol. I. 113.

Whereas, notorious frauds have been committed by evil disposed and designing persons, who frequently mortgage and borrow money on security of lands and slaves, having before conveyed, sold, or mortgaged the same, and the recording of all deeds and conveyances of lands, tenements, negroes, and other chattels, will greatly tend to the securing the titles of the proprietors, or mortgagees, and prevent such frauds for the future:

8. Sec. I. Be it therefore enacted, That all and every deed and deeds of sale, mortgages, or conveyances of any lands, tenements, negroes, or other goods and chattels, heretofore made in this province, which shall be recorded in the Secretary's office of this province, within six months after the passing of this Act, except such as have been made and executed in any of the British islands, or in any of the other of the colonies on the continent of North America, which shall be recorded within nine months, and except also such as have been made and executed in Great Britain or Ireland, which shall be recorded within twelve months; and all deeds of sale, mortgages,
conveyances, made and executed within this province, from and after the first day of January next ensuing, being recorded as aforesaid within ten days after the execution thereof, shall be deemed, held, and taken as the first deed of sale, mortgage or conveyance, and shall be allowed, adjudged, and held valid in all Courts of jurisdiction within this province, any former or other sale, mortgage, or conveyance, being of the same lands, tenements, negroes, and other goods and chattels, and not recorded as aforesaid, notwithstanding.

9. Sec. II. Provided always, and be it further enacted, That notwithstanding, if it shall so happen there be more than one mortgage at the same time, made by any person or persons to any person or persons, of the same lands and tenements, negroes, goods, or chattels, the several late or under mortgagees, who shall have recorded their mortgages, his, her or their heirs, executors, administrators or assigns, shall have power to redeem any former mortgage or mortgages, recorded as aforesaid, upon payment of the principal debt, interest, and cost of suit, to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, anything contained to the contrary thereof in anywise notwithstanding; and all and every person and persons who shall mortgage the same lands, tenements, negroes, goods, or chattels, a second time, the former mortgage thereof being in force, and not discharged, and shall not discover to the second mortgagee in writing under his or their hands, shall have no relief, power, or liberty of redemption whatsoever, in equity or otherwise, of and in the said after mortgage or mortgages.

10. Sec. III. Provided also, and be it further enacted, That nothing in this Act contained shall be construed, deemed, or extended to bar any widow of any mortgager of lands or tenements, from her dower and right in and to the said lands and tenements, who did not legally join with her husband in such mortgage, or otherwise lawfully bar or exclude herself from such her dower or right.

And to the end that no person may hereafter suffer any inconvenience in recording their title deeds, by exposing the defects thereof;

11. Sec. IV. Be it further enacted and declared, That no deed of feoffment, bargain and sale, deed of gift, or other conveyance, of any lands or tenements whatsoever, herebefore made, shall be impeached or set aside in any Courts of Law or Equity for want of attornment or livery and seizin, or enrolment, 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

*See further, as to recording conveyances of personality, secs. 32, 50, of this title, Act of 1827, sec. III.; Act of 1839, sec. II.  
†Mortgages 5 months, sec. 38, &c. Deeds 12 months, sec. 14.  
‡See next Act, sec. 12.
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.

12. Sec. V. This Act shall continue and be in force for and during the term of three years from and after the passing thereof, and from thence to the end of the next session of the General Assembly, and no longer.*

An Act to render easy the mode of conveying lands, and for making valid all deeds and conveyances heretofore that may be deficient in point of form.†—Approved Feb. 22, 1785. Vol. I. 115.

Whereas, many deeds of bargain and sale, and other deeds of feoffment or conveyance, have been made, which have not been enrolled, or livery and seisin had, or may be deficient in point of form, when it was the legal intent of the party to sell and lawfully convey the same:

13. Sec. I. Be it enacted, &c. That no deed of feoffment, bargain and sale, and deed of gift, or other conveyance of lands or tenements whatsoever, heretofore made, shall be impeached or set aside for want of form or enrolment.

14. Sec. II. And to the end that such evils may be remedied in future;

Be it enacted, &c. 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 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

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†See sec. 4, of this title.
‡As to deeds attested by a single witness, being a Justice of the Peace or Clerk, see sec. 21, this title, and note thereto.
§See Act of 1837, sec. III, sec. 32 of this title.
||Time extended where a failure to record, by several Acts, until by Acts of 1837 and 1839, deeds may be recorded at any time; see sec. IV of the Act of 1837, as to the effect of a failure to record within twelve months, sec. 46 of this title.

[1.] If the acknowledgment is without date, it will be presumed to be at the time of the execution of the deed. 1 Kelly, 3.
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.

15. Sec. III. And in case of dower, Be it further enacted, That any such deed of conveyance of lands or tenements, in which a female convert may be interested, by dower or otherwise, and that such female convert doth voluntarily with her husband agree, and sign, seal and deliver, before lawful evidence, such deed of conveyance of any lands or tenements as aforesaid, and also before the Chief Justice, or any Justice of the Peace, on private examination, doth acknowledge and agree that she did, of her own free will and accord, subscribe, seal and deliver the said deed, with an intention thereby to renounce, give up, and forever quit claim to her right of dower and thirds of, into and to the lands or tenements therein mentioned, then, and in that case, such deeds of conveyance, or bargain and sale, of lands and tenements, shall be held, deemed, and considered, according to the construction and meaning thereof, to be good and valid in Law and Equity, and shall be, and is hereby declared to be a free, full and absolute renunciation of dower and thirds, any law, usage, or custom to the contrary notwithstanding.*

16. Sec. IV. 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.

17. Sec. V. 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

*See secs. 5 and 6 of this title, and notes thereto.
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.

18. Sec. VI. It shall and may be lawful for any person or persons, whose titles, bonds, notes, books of accounts, receipts, and papers touching his, her, or their estate and property, may have been lost or destroyed during the late war, who shall produce a paper writing, purporting to be a copy or as near a copy of the original paper so lost or destroyed as aforesaid, with full or circumstantial proof of the substance thereof; and of his, her, or their title thereto, and shall lodge the same in the office of the Clerk of the County where such person resides, or where the land in question is situate, and shall notify by public gazette of this State, that such person or persons intends to establish such deed or paper, that then it shall and may be lawful, and in case no sufficient objection shall be made, for the Superior Courts in each County to establish the title and right of such person or persons to the property alluded to, by the testimony and papers offered to the said Court, and be deemed as good evidence in law, so far as to give the party applying a good right and title, until a better shall appear and be made out to the satisfaction of the Court and Jury within the time limited by the Act of limitation.*

An Act to extend the limitation of actions, and for other purposes therein mentioned.—Approved Feb. 1, 1788. Vol. I. 36.

Sec. I. [Temporary.]

And whereas, the time limited in an Act entitled "an Act to render easy the mode of conveying lands, and for making valid all deeds and conveyances heretofore that may be deficient in point of form," and for other purposes therein mentioned, has not allowed sufficient time for some of the purposes for which it was intended:

19. Sec. II. Be it enacted, &c. That no deed of feoffment, bargain and sale, lease and release, or other conveyance of lands and tenements, bona fide, executed as directed by the said recited Act, shall in any wise be affected by reason of the same not being registered or recorded in the respective offices where the lands lie, agreeably to the said Act; but that every person or persons shall, and he or they hereby have full liberty and power to register or record his, her, or their deed or deeds of conveyance of lands and tenements aforesaid, at any time within the term of two years from the date hereof; and the said deeds so registered or recorded as last aforesaid, are hereby declared to be good and valid in Law and Equity, accord

*As to mode of establishing lost papers, see "Judiciary."
ing to the true intent and meaning thereof, any thing in the before mentioned Act notwithstanding.*

An Act to amend, explain, and continue the "Act for regulating the Judiciary Department of this State."—Approved Dec. 9, 1790. Vol. I. 37.

Sec. XIV. The "Act to extend the limitation of actions, and for other purposes therein mentioned," passed at Augusta the first day of February, 1788, be, and the same is hereby revived and continued until the first day of February, 1793, and no longer.* [All the remainder of this Act repealed by the Judicial Act of 1792. Watk. 492.]


29. Sec. V. Estates shall not be entailed.t [For the remainder of this Act, see Executors, Administrators, &c. secs. 1, 2, 3, 73.]

An Act to amend and explain an Act entitled "An Act to legalize and make valid certain acts of Sheriffs and Clerks; and to regulate the admission of evidence in the several Courts of Law and Equity in this State, so far as relates to certain papers."—Approved Dec. 15, 1810.‡ This Act approved Dec. 10, 1812. Vol. III. 292.

Whereas, the before-recited Act does not sufficiently provide for all the cases for which it was intended; and whereas, there is of record in this State, a number of deeds of conveyance which are only attested by one witness, and who has subscribed the same as a Justice of the Peace, and also a great number which have been proven before a Clerk of the Superior Court, who has subscribed himself as Justice ex officio, or as Clerk in his official capacity in the recess of the Court. And whereas, doubts have been entertained as to the propriety of admitting such deeds as evidence in the several Courts of Law and Equity in this State,

21. Be it enacted, &c. That where any deed of conveyance has been attested by one Justice of the Peace or a Clerk of the Superior Court, and recorded in the time prescribed by law, the same shall be admitted as evidence in any of the Courts of Law or Equity in

*By Acts of 1837 and 1839, the time is extended indefinitely, see sects. 45, 50.
†This provision was included in the Constitutions, both of 1777 and 1789, but omitted in that of 1798. Words which would create an estate tail, vest a fee simple—see Act of 1831, sec. 24 of this title.
‡For this Act see title "Evidence," 4 to 7. By the second section all deeds, mortgages, &c. enrolled by deputy clerks and certified by them, are admissible in evidence; see also "County officers," sec. 20.

[1.] See Choice v. Marshall, 1 Kelly, 97. 3 Kelly, 551.
this State, and as such submitted to the Jury, any law, usage, or custom to the contrary notwithstanding.*

An Act to prevent Assignments, or transfers of property, to a portion of creditors, to the exclusion and injury of the other creditors, of persons who fail in trade, or who are indebted at the time of such assignment or transfer.—Approved Dec. 19, 1818. Vol. III. 248.

Whereas, a practice of selecting particular creditors by assignments and transfers of property, made by persons indebted, and thereby excluding or defrauding other bona fide creditors of their just claims on the estate of insolvent debtors, is contrary to the first principles of Equity and Justice; to prevent the mischief thereof:

22. Be it enacted, &c. 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.

An Act to regulate the admission of evidence in certain cases, &c., and to provide for the recording of conveyances of personal property.—Approved Dec. 21, 1819. Vol. III. 300.

Sec. I. II. [For these sections, see title "Evidence," secs. 23, 24.]

Sec. III. All conveyances of personal property duly executed, and bearing date after the passage of this Act may be recorded, and

*See Acts of 1841 and 1850, as to deeds attested by Clerks of Superior and Inferior Courts secs. 57, 65, 69, of this title.
†As to assignments by Insolvent Banks, see "Penal Code" 6, Div. sec. 134.

[1.] A bona fide conveyance in payment of a pre-existing debt, free from any trust, is not void under this Act. 1 Kelly, 157, 294.
A mortgage bona fide is not obnoxious to this Act. 1 Kelly, 176.
But an assignment in trust for the benefit of a portion of the creditors is void, 3 Kelly, 146. 7 Ga. 237.

An assignment to a surety bona fide, who has assumed the payment of the debts is valid. 5 Ga. 555.

After a void assignment is made, a mortgage bona fide is valid. 7 Ga. 275.
shall be admitted as evidence under the same rules and regulations as govern in cases of real property.*

An Act explanatory of the 5th section of an Act passed Feb. 16, 1799, entitled "An Act to carry into effect the sixth section of the third article of the Constitution; and to amend an Act to carry into effect the sixth section of the fourth article of the Constitution, touching the distribution of intestates’ Estates, directing the manner of granting Letters of Administration, Letters Testamentary, and Marriage Licenses, and to prevent entails;" and to alter the rules for construing conveyances generally.—Approved Dec. 21, 1821. Vol. IV. 206.

24. Whereas, doubts have arisen as to the true and proper construction of the fifth section of the above-recited Act, it having been held by some that all conveyances in fee tail are rendered absolutely void by said section, and by others that such conveyances vest a fee-simple estate in the person or persons to whom they are executed, and again by others that they vest only a fee conditional in common law; and whereas, it is proper that all doubts upon the subject should be immediately removed; and whereas, the intention of parties to contracts and conveyances is often defeated, and great injustice done by construing the same according to the rules that now prevail; for remedy whereof,

SEC. I. Be it enacted, &c. That all gifts, grants, bequests, devises and conveyances of every kind whatsoever, whether, real or personal property, made in this State, and executed 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 conditionalibus,) 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.1

25. SEC. II. All gifts, grants, feoffments, bequests, devises, and conveyances of every kind whatsoever, of real or personal property, hereafter made or executed within 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 estate, unless it be otherwise expressed, and a less estate mentioned and limited in such gift, grant, feoffment, bequest, devise, or conveyance.

SEC. III. All laws or parts of laws, militating against this Act are hereby repealed.

An Act to authorize the admission of certain documents therein mentioned, as evidence in the several Courts of this State.—Approved Dec. 20, 1823. Vol. IV. 213.

26. From and after the passing of this Act, all deeds of conveyance, mortgages, and other instruments of writing heretofore proved

*See Acts of 1837 and 1839, sects. 32, 49, of this title.
by a subscribing witness or witnesses to the same, before any Judge of the Superior Court, assistant Justice, Justice of the Inferior Court, or Justice of the Peace, shall, if the witness or witnesses proving the same has not subscribed his, her, or their name or names to the probate or affidavit made before such Judge of the Superior Court, assistant Justice, Justices of the Inferior Court, or Justice of the Peace, of the execution of the deed of conveyance, mortgage, or other instrument of writing, and which shall have been duly recorded, be held, deemed, and considered as legal and valid to all intents and purposes, and admitted in evidence in any Court of Law and Equity in this State, as if the said probate and affidavit had been subscribed by the witness or witnesses proving the same; any law, custom, or usage to the contrary notwithstanding; Provided, that nothing in this Act shall be construed to divest, or in any manner to affect any right which may have been vested or accrued by [before] the passage of this Act.

An Act to admit certain deeds to record, and to authorize the same, or copies thereof, to be read in evidence, and also the copies of certain other deeds.—Approved Dec. 23, 1826.† Vol. IV. 217.

Deeds for lands recorded, though not within the time prescribed by law, evidence.

Copies may be read.

Deeds not yet recorded, may be recorded within twelve months.

Repealing clause.

An Act to amend an Act entitled an Act to enable Femce Coverts to convey their Estates, and for confirming and making valid all Conveyances and Acknowledgments heretofore made by Fem Coverts, passed the 24th of April, 1760, so far as the same relates

*See Acts of 1838 and 1841, sects. 48, 58, where witness dies before probate.
†Revised by Act of 1834, sec 42.
‡Same provision as to bills of sale; see Acts of 1845, sec. 61 of this title.
§Extended without limit as to time by Act of 1837 and 1839; see secs. 45, 49 of this title.
to Feme Coverts conveying their Dower.—Approved — 23, 1826. Vol. IV. 217.

29. Whereas, the before recited Act, in order to enable the hus-
band to convey the entire interest which he has in lands and ten-
ements, requires that the wife, by her own free consent, become a
party in the deed of conveyance with her husband, and make, sign,
and deliver a formal relinquishment of her interest [of] dower
in and to the premises therein described; for remedy whereof,
Be it enacted, That from and immediately after the passing of
this Act, all conveyances of lands and tenements made by the hus-
band, alone during the coverture, shall be legal and valid, and effectu-
ally convey the entire premises therein described, except such lands
as the husband may have become possessed of by his intermarriage
with said feme covert; any law, usage, custom, or rule of Court to
the contrary notwithstanding; Provided, that nothing herein con-
tained shall prevent the widow from her right to dower in all lands
of which her husband may have died seized and possessed.

Sec. II. [Re-enacted. See "Executors, Administrators, &c." sec. 30.]

Sec. III. So much of the above recited Act as militates against
this is hereby repealed.

An Act to provide for the recording of Deeds of Mortgage upon
real and personal property within this State, and to define the lien
of the same; and also to amend an Act entitled "an Act to ad-
mit certain Deeds to record, and to authorize the same or copies
thereof to be read in evidence, and also the copies of certain other
IV. 221.

Whereas, it is doubted if there be any law of force in this State
requiring deeds of mortgage to be recorded; and whereas, such a
law is highly necessary for the prevention of frauds and oppression;
for remedy whereof,

30. Be it enacted, That all deeds of mortgage upon real property
which have been heretofore executed shall, after having been proved
as in case of deeds of real property, be recorded in the Clerk's office
of the Superior Court of the County in which such real property
may lie, within twelve months after the passing of this Act; and
that all deeds of mortgage upon personal property which have been
heretofore executed, shall be proved by the affidavit of the subscrib-
ing witness, and recorded in the Clerk's office of the Superior Court
of the County in which the mortgagee shall have resided at the
time of the making of the same, or if he be dead, in the County

*Or by the Sheriff or other legal officer; see sec. 69. See "Insolvent debtors," sec. 33, as to conveyance of land exempt from levy and sale.

[1.] A mortgage in Georgia is merely a security for the debt; the title remains in the mort-
gager. 1 Kelby, 176, 572. 7 Ga. Rep. 183.
where his legal representatives reside at the time of recording the same; or if there be no legal representatives in the County where the mortgager last resided previous to his death, within twelve months after the passage of this Act; Provided, that nothing herein contained shall be so construed as to require mortgages which have already been recorded to be again recorded, but the same shall be held and deemed to be legally recorded, and admitted in evidence under the laws now in force in this State; and provided also, that if the witnesses to any mortgage are dead, or removed from the County, then the same may be recorded upon the affidavit of one or more persons who are acquainted with the handwriting.

31. Sec. II. All deeds of mortgage upon real property hereafter to be made, shall be proved in the same way as is above required by the first section of this Act for the proving of mortgages of real estate, and shall be recorded in the Clerk's office of the Superior Court of the County in which such real estate shall lie, within three months from the date of such deed; and that all deeds of mortgage upon personal property hereafter to be made, shall be proved in the same manner as is provided in the first section of this Act for the proving of like deeds heretofore made, and shall be recorded in the Clerk's office of the Superior Court of the County in which the mortgager resided at the time of the execution of the said mortgage, within three months after the date of such mortgage.*

32. Sec. III. Every deed of conveyance or mortgage of either real or personal property hereafter to be made, may, upon being executed in the presence of, and attested by a Notary Public, Judge of the Superior Court, Justice of the Inferior Court, or Justice of the Peace, (and in case of real property, by one other witness,) be admitted to record and made evidence in the different Courts of Law and Equity in this State, as though the same had been executed, proved, and attested as heretofore required by the laws of this State in case of deeds of real property.

33. Sec. IV. Upon failure to record any mortgage, as hereinbefore required, within the time or times hereinbefore specified for recording the same, that then and in such case all judgments obtained before the foreclosure of the said mortgage, and also any mortgage executed after the same, and duly recorded, shall take lien on the said mortgaged property in preference to the said mortgage.¹

34. Sec. V. And whereas, personal property is frequently mortgaged while beyond the limits of this State, which property, so mortgaged, is afterward brought within the limits of this State, before the debt for which the same was pledged is satisfied; Be it therefore enacted, That in cases of mortgages of personal property, executed when the said property so mortgaged is beyond the limits of this State, and which property shall be afterward brought within the limits of this State, such mortgages shall be recorded within six months after the said property shall be so brought in, in the office of

*For mode of foreclosing mortgages, see "Judiciary," secs. 358, 359.

the Clerk of the Superior Court of the County where the person so bringing the said property shall first establish his residence.

35. Sec. VI. If the holder of any mortgage of property, so brought into the State, shall fail to record his mortgage at the place and within the time specified in the preceding section for the recording the same; then and in such case any and all judgments which shall have been duly obtained against the said mortgagee, before the foreclosure of such mortgage, shall be entitled to take lien on the said mortgaged property, prior to the said mortgage; Provided, that if the said mortgagee or his assignee, or the legal representatives of such mortgagee or assignee shall, on foreclosure of the said mortgage, make affidavit before the Judge or Justice granting such foreclosure, that he was the holder of the said mortgage at the time of the removal of the said property into this State, and that he did not know, before the expiration of the time fixed as aforesaid for recording such mortgages, that the said mortgaged property had been removed within this State; or if the said debt be not due, and the mortgagee, or his legal representatives, or assignee, shall make a like affidavit before a Judge or Justice as aforesaid, and place the said mortgage and affidavit together on record in the proper office hereinbefore specified; then and in such case, the said mortgage shall be considered and taken from that time to have and to be entitled to the same lien as if the same had been duly recorded.

36. Sec. VII. All deeds of land which may have been recorded on the oath of one or more of the subscribing witnesses, or if subscribed by two or more witnesses, one of whom attested the same as a Judge of the Superior Court, Justice of the Inferior Court, Justice of the Peace, or Notary Public, shall have been recorded in their official attestation; such deeds, though not recorded within the time prescribed by law, shall be admitted in evidence in the same manner as deeds which have been duly recorded;* and when the originals of such deeds are lost or destroyed, and that fact is made known to the Court, the copies of such deeds, taken from the record, and duly attested by the person having the custody of the same, may be read in evidence before any Court of Law, or Equity in this State.

37. Sec. VIII. And be it further enacted, That all deeds other than mortgages, executed and proven, as stated in the preceding section, but not recorded, may be recorded within twelve months from the passage of this Act.†

An Act to authorize the appointment of Commissioners out of this State to take the Acknowledgments of Deeds and other instruments of writing under seal, and to admit the same to record in this State; and also to take Affidavits.—Approved Dec. 22, 1829. Vol. IV. 225.

38. The Governor of this State be, and he is hereby authorized

*See Acts of 1826 and 1837, sec. 27, 43 of this title. Also, Act of 1845, sec. 61.
†By Acts of 1837 and 1839, may be recorded at any time. See secs. 45, 49 of this title.
The Governor, authorized to nominate and commission one or more commissioners, in any of the States, Territories, or the District of Columbia, to take the acknowledgment of deeds, &c., to continue in office at the pleasure of the Governor. Such writing or such proof to be recorded, &c.

Every such commissioner required to take an oath.

An Act to make valid certain deeds, &c.—Approved Dec. 23, 1833. Pam. 81.

Sec. I. [Private.]

41. Sec. II. All sales made by the commissioners of the several County Academies in this State, shall be held, deemed, declared and considered valid, and that all deed or deeds, made and executed by a majority of said commissioners, conveying a title to any tract or tracts, parcel or parcels of land, by them sold to a bona fide purchaser, which said commissioners or their agents may have heretofore purchased at the sales of confiscated property, shall be held, deemed, declared and considered valid to all intents and purposes, and that the same shall be read in evidence in any Court of Law and Equity in this State, any law, usage or custom to the contrary notwithstanding.
An Act to revive and continue in force "an Act to admit certain deeds to record, and to authorize the same, or copies thereof, to be read in evidence, and also the copies of certain other deeds, as-
sented to the 23d of December, 1826."—This Act approved Dec. 20, 1834. Pam. 94.

An Act to admit certain Deeds to be recorded and read in evidence; and also to prescribe the effect of certain other Deeds.—Assented to Dec. 25, 1837. Pam. 91.

43. Sec. I. Be it enacted, That from and after the passing of this Act, all deeds for lands which may have been recorded upon the usual proof of execution, but not recorded within the time prescribed by the laws of this State, shall be admitted in evidence, without further proof; and when the originals are lost or destroyed, and that being made judicially known to the Court, copies of the same may be introduced and read in evidence, on any trial before any Court of Law or Equity in this State.‡

44. Sec. II. All deeds executed, according to the laws of this State, but not yet recorded, may nevertheless be recorded within twelve months from the passage of this Act, upon the usual proof of their execution; and when so recorded, the same or copies thereof, when the originals are shown to be lost or destroyed, may be read in evidence without further proof.§

45. Sec. III. All deeds conveying lands hereafter executed, upon being attested or proved in the manner required by the laws of this State, shall be admitted to record, at any time, and after being recorded, shall be received in evidence in any Court of Law or Equity, without further proof of the execution thereof.

46. Sec. IV. In all cases where two or more deeds shall hereafter be executed by the same person or persons, conveying the same premises to different persons, the one recorded within twelve months from the time of execution, (if the feoffees have no notice of a prior deed, unre-
corded at the time of the execution of the deed to him or her,) shall have preference; and if all be recorded, or not recorded within said time, the eldest deed shall have the preference.||
SEC. V. All laws and parts of laws militating against this Act, be, and the same are hereby repealed.

An Act to prescribe the mode of making gifts of slaves.—Assented to Dec. 29, 1838. Pam. 107.

47. SEC. I. Be it enacted, That no gift of any slave or slaves hereafter to be made, shall be good or available in Law or in Equity against the creditors of the donor, or subsequent purchasers from him, without actual notice, unless the same be made in writing, signed and sealed by the donor, attested by at least one subscribing witness, and shall be proved or acknowledged, and be recorded within twelve calendar months from the execution thereof.¹

SEC. II. All laws and parts of laws militating against this Act, be, and the same are hereby repealed.

An Act to admit certain Deeds, Mortgages, and Bills of Sale, to be proven and recorded, and to admit them or their copies in evidence in the Courts of Law or Equity in this State.—Assented to Dec. 31, 1838. Pam. 94.

48. SEC. I. Be it enacted, That from and after the passing of this Act, that whenever any person, or body politic or corporate, may hold any deed, mortgage or bill of sale, purporting to have been signed in the presence of a witness or witnesses, according to the requisitions of law, and the said subscribing witness or witnesses shall have departed this life,¹ before the said deed, bill of sale, or mortgage, shall have been proven; that then and in that case, it shall and may be lawful for the holder of said deed, mortgage, or bill of sale, to prove the same by proving the hand-writing of the witnesses who may have attested the same, and the hand-writing of the maker of said deed, mortgage, or bill of sale, by affidavit in writing to be attached thereto, which said affidavit shall be taken before a Judge of the Superior Courts or Justice of the Inferior Courts of this State, and the same so proven and recorded shall be admitted in evidence in any Courts of Law or Equity in this State, under the same rules of law by which they would have been subject if recorded in due time of law. [Proviso repealed by Act of 1850, sec. 67.]

SEC. II. All laws or parts of laws militating against this Act be, and the same are hereby repealed.

An Act to continue in force the second section of an Act passed on the 25th December, 1837, entitled an Act to admit certain Deeds to be recorded, and read in evidence; and also to prescribe the

*Extended, see sec. 56.

¹ As to parol gifts, see 1 Kelly, 595. 3 Kelly, 513.
Be it enacted, That the said section of said Act be, and the same is hereby continued of force without limitation as to the time of recording the deeds therein mentioned, which were not recorded before the passage of said Act.

49. Sec. I. Be it enacted, That the said section of said Act be, and the same is hereby continued of force without limitation as to the time of recording the deeds therein mentioned, which were not recorded before the passage of said Act.

50. Sec. II. All bills of sale of personal property, heretofore executed, but not recorded, may be recorded at any time after the passage of this Act, and may be read in evidence without further proof.

51. Sec. III. From and after the passage of this Act, all deeds that have been lost or mislaid, and which have been recorded, but the time when they were recorded not appearing on the record, the same shall be read in evidence, without regard to the said omission.

An Act to provide for the acknowledgment and execution of Deeds of Conveyance and other instruments of writing in foreign countries, touching property in this State.—Assented to Dec. 23, 1839. Pam. 197.

52. Sec. I. Be it enacted, That from and after the passage of this Act, the consuls and vice-consuls of the United States, duly appointed and recognized, shall be authorized and empowered, as they hereby fully are, to receive the acknowledgment in writing of citizens of the United States, or other persons being or residing in the districts of their several consulates, of deeds of conveyance, mortgage, letter of attorney, or other legal instruments whatever, touching or affecting real estate or other property, rights or interests whatever, situated, lying or being in any part of this State, belonging to the said parties in whole or in part, in their own right or as the agents of others; and that the certificates of the said consuls and vice-consuls, under their official seals shall be good and available as evidence of the execution of such deeds of conveyance or other legal instruments, which shall be altogether valid and sufficient for the purpose therein mentioned.

53. Sec. II. The said consuls and vice-consuls shall be authorized and empowered, as they hereby fully are, to witness and take the acknowledgments of any citizen or citizens of the United States, or other persons within their consular's districts as aforesaid, of any lawful contract or engagement to be executed or have effect in this State, of whatever nature or kind which they may enter into, or form in the said district.

54. Sec. III. The consuls and vice-consuls shall be, and are hereby fully authorized and empowered in like manner to witness any other lawful act in the several districts as aforesaid, on the part or behalf of citizens of the United States or others as aforesaid, which may be interesting or useful to them in reference to concerns to this
CONVEYANCES AND REGISTRY—1840-'41.

Tax collector's deeds—Deeds attested by Clerks.

Certificates of evidence. State of whatsoever descriptions, and that the certificates of the said consuls and vice-consuls, under their official seals as aforesaid, shall be good and available as evidence of such contracts, engagements and acts, shall be accordingly valid, and sufficient to all intents and purposes in this State.

An Act to admit Tax Collectors' Deeds in evidence in certain cases therein named.—Assented to Dec. 23, 1840. Pam. 185.

55. Sec. I. Be it enacted, That from and after the passage of this Act, when any party to a suit in any of the Courts of this State shall desire to offer in evidence in said suit a Tax Collector's deed, and shall make oath that the Tax Collector who executed the same is dead or has removed to parts unknown, it shall be the duty of such Court to admit the said deed, as evidence of the facts therein set forth and contained, without further proof; Provided, the same has been duly recorded.

Sec. II. [Repealing clause.]

An Act to authorize certain instruments therein mentioned, to be recorded and read as evidence.—Assented to Dec. 10, 1841. Pam. 140.

56. Sec. I. Be it enacted, That all deeds, bills of sale, and other conveyances heretofore or hereafter executed, when the witnesses, or witness to the same, are or is dead, become insane, or removed from the State, before the same are proved and recorded, may be recorded and read in evidence without further proof, upon affidavit in writing being made by some disinterested person or persons, before any judicial officer of this State, and attached to such instrument, proving the hand-writing of the person making such instrument, and of each of the witnesses thereof.

An Act to legalize and make valid certain acts of Clerks of the Superior Courts of this State; and to regulate the admission of evidence in the several Courts of Law and Equity in this State, so far as relates to certain papers; and to legalize the acts of A. V. Calvin, Deputy Sheriff of Camden County.—Assented to Dec. 10, 1841. Pam. 140.

57. Sec. I. Be it enacted, That from and after the passage of this Act, all deeds of conveyance to lands which have been attested by any Clerk of the Superior or Inferior Courts of this State, and which have been recorded within the time prescribed by law, the same shall be admitted as evidence in any of the Courts of Law and Equity in this State, and as such be submitted to the Jury; any law, custom, or usage to the contrary notwithstanding.*

*See sec. 21, of this title. See also Act of 1850, sec. 65.
58. Sec. II. All deeds of like character, which have not been recorded within the time prescribed by law, the same may be yet admitted to record, and be admitted in evidence in any of the Courts of Law or Equity in this State.

Sec. III. [Local.]

Sec. IV. [Repealing clause.]

An Act to alter and explain the first section of an Act passed in the year eighteen hundred and twenty-six, entitled an Act to amend an Act to enable Feme Coverts to convey their estates, and for confirming and making valid all Conveyances and Acknowledgments, heretofore made by Feme Coverts, passed the twenty-fourth of April, seventeen hundred and sixty, so far as relates to Feme Coverts conveying their dowers.—Assented to Dec. 28, 1842. Pam. 75.

59. Be it enacted, That all conveyances of real estate, made by any Sheriff or other officer, in pursuance of sale made under execution, other legal process, or order of Court, in the lifetime of the husband, shall be as good and effectual, in bar of the right of dower, as if the conveyance were made by the husband himself.

An Act to provide for the introduction in evidence of certain copy executions in certain cases therein defined.—Approved Dec. 20, 1845. Pam. 37.

60. Sec. I. Be it enacted, 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 execution 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 of 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.

An Act for the admission of certain evidence in cases therein mentioned.—Approved Dec. 27, 1845. Pam. 38.

61. Sec. I. Be it enacted, That wherever deeds or bills of sale, properly executed, have been heretofore recorded in any of the offices of the Clerks of the Superior Courts of this State, prior to any Act authorizing such record—and the original of such deed or bill of sale has been lost or destroyed—a copy thereof duly certified by the Clerk of said Court, shall be admitted in evidence, in lieu of the original, in any Court of Law or Equity in this State—any law, usage or custom to the contrary notwithstanding.
An Act to require Marriage Settlements to be recorded.—Approved Dec. 30, 1847. Pam. 57.

62. Sec. I. Be it enacted, That all marriage agreements or settlements heretofore executed either within this or any other State or Territory, where the husband resides within the limits of this State, shall be recorded within twelve months after the passage and publication of this Act, in the Clerk’s office of the Superior Court in the County of the residence of the husband.

63. Sec. II. All marriage agreements or settlements hereafter made either in this State or any other State or Territory, where the husband resides in this State, shall be recorded within three months from the execution thereof, in the Clerk’s office of the Superior Court of the County of the husband’s residence.

64. Sec. III. If any such instrument be not recorded within the time prescribed by this Act, the same shall not be of any force or effect against a bona fide purchaser without notice, or bona fide creditor, or without notice, or bona fide surety without notice, who may purchase or give credit, or become surety, before the actual recording of the same.

An Act to authorize the Clerks of the Superior Courts to administer oaths in certain cases, and to admit to record all deeds, conveyances, and other papers official, signed for that purpose by the Clerks of the Superior Courts.—Approved February 14, 1850. Pam. 70.

65. Sec. I. Be it enacted, That from and after the passage of this Act, it shall and may be lawful for the Clerks of the Superior Courts to administer to any witness or witnesses to a deed, conveyance, or other paper intrusted for record, the usual oath or affidavit heretofore administered by a Judicial officer or Notary Public, in making probate of the same to admit said papers to record.*

66. Sec. II. The Clerks of the Superior Courts are hereby authorized to sign officially all papers intrusted for record, which shall be recorded upon such signature as though signed by a judicial officer.*

An Act to extend the provisions of an Act passed on the 31st December, 1838, entitled an Act to admit deeds, mortgages, and bills of sale to be proven and recorded, and to admit them or their copies in evidence in the Courts of Law and Equity in this State, and to authorize the proof, recording and reading in evidence of certain other instruments.—Approved January 16, 1850. Pam. 150.

67. Be it enacted, That the proviso contained in the first section

*Re-enacted by the same Legislature, sec. 69.
of said Act be and the same is hereby repealed, and that said Act of 1833 (other than said proviso) be and the same is hereby extended to all cases in which deeds, mortgages and bills of sale have been heretofore or may be hereafter executed, proved or recorded, as is authorized by said Act.

68. And be it further enacted, That when a deed of conveyance or bill of sale has been or may be executed in another State, the same may be proved by the affidavit of a subscribing witness, as in other cases, before a judicial officer of this State, and shall be recorded and read in evidence without further proof.

An Act to authorize certain deeds to be read in evidence and to make legal the registry of the same.—Approved January 16, 1850. Pam. 149.

69. Sec. I. Be it therefore enacted, That from and after the passage of this Act, any deed, bill of sale, or any other conveyance of real or personal property, heretofore or hereafter made, executed according to the laws of this State, and the execution thereof has been or hereafter may be proved upon the oath of one of the subscribing witnesses before the Clerk of the Superior Court of any County in this State, or by him and another witness, attested hereafter or hereafter recorded, may be read in evidence in any Court of this State, without further proof of execution, and that such recording of the same shall be legal to all intents and purposes.*

An Act to regulate the admission of deeds in evidence in certain cases therein mentioned.—Approved Jan. 17, 1850. Pam. 149.

70. Sec. I. Be it enacted, That any deed or conveyance heretofore made of lands in this State, or which shall hereafter be made, purporting to be duly proved, and which has been or may hereafter be recorded within twelve months from its date, or within the time prescribed by law, without having the probate recorded, may at any time hereafter be again recorded with such probate in the County where the land conveyed may lie, or in the County where the deed may have been or may hereafter be first recorded; and when so again recorded with the probate shall be admitted in evidence, and have the same lien and validity without further proof, as if the probate had been recorded with the first record of said deed.

Sec. II. All laws and parts of laws militating against this Act be and the same are hereby repealed.

An Act to authorize Notary Publics to administer oaths, &c.—Approved Feb. 11, 1850. Pam. 331.

71. Sec. I. Be it enacted, That Notary Publics are hereby de...
clared competent to administer oaths as Justices of the Peace may do in relation to the probate of deeds and other instruments, and to receive the same compensation therefor.

72. Sec. II. Perjury or false swearing may be assigned on oaths made before Notary Publics as may now be done on oaths administered by judicial officers to affidavits.

Sec. III. All laws or parts of laws militating against this Act, be and the same are hereby repealed.

[Statutes omitted as obsolete, repealed or superseded. Provincial Act of 1763, Watkins, 86.]

**COUNTIES.**

|-------------------------------|-----------------------------|

An Act for building and keeping in repair the Court Houses and Jails in the respective Counties within this State, and for the support of the Poor.—Approved Feb. 21, 1796. Vol. I. 171.

1. Sec. 1. From and after the passing of this Act the Justices of the Inferior Courts of every County within this State, in their respective Counties, shall cause to be erected and kept in good repair, (or where the same shall be already built,) shall maintain and keep in good repair, at the charge of such County, one good and convenient Court house of stone, brick, or timber, and one sufficient jail,†

*This title and the two next succeeding are so nearly allied that the Acts appropriate to each can with difficulty be distinguished. They should be consulted together.

For Act in relation to bridges over streams dividing different Counties, see "Roads, Bridges, and Ferries," sec. 49.

For Acts authorizing Superior and Inferior Courts to grant charters and change names in certain cases, see "Judiciary," sect. 283.

For various Acts in relation to Prison Bounds, see "Insolvent Debtors."

†Where there is no jail, see "Judiciary," sect. 86.

(1.) The Justices are not liable individually on a note given for the building of a Court House. 2 Kty., 214.

If the County has an insufficient jail, the County, and not the prisoner, must pay the expenses of a guard. 9 Ga. Rep.
with the necessary apartments for the safe-keeping of criminals and debtors, well secured with iron bars, bolts, and locks; [and shall cause to be erected contiguous thereto, one pillory, whipping-post, and stocks.]*

2. Sec. II. The Inferior Courts in each County shall have full power and authority at all times to inquire into the conduct of Jailers, and the state of jails in their respective Counties, and on neglect of duty to cause such Jailers to be removed, by an order to the Sheriff for that purpose; and the said Courts shall have full power and authority to call on all persons, their heirs, executors, or administrators, in their respective Counties, who have had, or may have County moneys in their hands, collected for the express purpose of building Court houses and jails, or for any other County purposes whatever; and in case of neglect or refusal to pay the same, the said Court shall and are hereby required to cause executions to be issued for the full amount appearing to be due,† in the same manner as the Treasurer is authorized by law to issue executions against the defaulting collectors of taxes in the different Counties; and such moneys, when collected, may be applied by such Court to the uses and purposes of building and repairing Court houses and jails.

Sec. III. [Superseded by Act of 1821. See sec. 7, 8, 9, of this title.]

3. Sec. IV. All moneys that now are, or may hereafter come into the hands of the Clerks of the Superior or Inferior Courts, by fines or forfeitures, and all money arising from the sale of estrays, are hereby made liable and subject to the draught, or order of the several County Courts, to be appropriated and applied as aforesaid, either in the building or repairing Court houses and jails, or to the support of the poor and building bridges, at the discretion of such Courts.‡

Sec. V. [Relates to the County of Bryan—local and temporary.]

4. Sec. VI. All laws, or parts of laws, clause or clauses heretofore made, or such part thereof as authorize the County Courts of this State to levy a tax for County purposes, be, and the same are hereby repealed. Provided, that nothing in this Act contained shall extend or be construed to extend to have operation in the County of Chatham, so as to repeal or affect any law appointing the Mayor, Aldermen of the City of Savannah, commissioners of the Court house and jail in the said County.

An Act to impose an additional Tax on Proprietors or Exhibitors of Shows.—Approved Dec. 18, 1820. Vol. IV. 415.

5. Sec. I. From and immediately after the passing this Act it

*Superseded by Penal Code, discontinuing these punishments.
†See "Tax," 54, 72. See further on this subject, "County Funds and Records."
‡Fines and forfeitures applied to pay certain costs, see "Penal Laws," 317. As to fines imposed by Courts of Inquiry, see "Militia," sec. 120.

(1.) This provision unconstitutional, except as to Collectors, Receivers, or other legally appointed public monetary agents. 5 Ga. Rep. 183.
shall and may be the duty of the Justices of the Inferior Courts, Justices of the Peace, and the corporation officers of all Cities, Towns, or Villages within this State, or any one or more of them, to exact and collect from all proprietors or exhibitors of shows a sum not exceeding fifty nor less than five dollars for each and every day that shall exhibit shows of any kind within any corporation or County in this State.*

6. Sec. II. All sums so collected within the limits of any corporation shall be applied, by the officers of such corporation, to such purposes as they may deem proper within the limits of their official jurisdiction; and all sums so collected by the Justices of the Inferior Courts, or Justices of the Peace, without the limits of any corporation shall be appropriated to County purposes; which said fines and penalties shall be collected in the same manner as other fines and penalties are collected under the existing laws of this State.

"An Act to authorize the Justices of the Inferior Court in the several Counties in this State to levy extraordinary Taxes for County purposes."—Approved Dec. 19, 1821. Vol. IV. 419.

7. From and after the passing of this Act, the Justices of the Inferior Court of the respective Counties in this State, or any three of the bench of Justices of the said Court in any County, shall have power, whenever in their opinion the exigencies of their respective Counties may so require, to levy upon the inhabitants of any County in which the said Justices may reside, a tax extraordinary of the general State tax, and shall be authorized to have the same collected by the tax collector for any County in which such tax may be levied by them;† Provided, that nothing herein contained shall be construed to authorize the Justices as aforesaid, to order any levy which shall exceed fifty per centum‡ on the general State tax annually; [Proviso, local.]

8. Sec. II. No extraordinary tax shall be levied and collected by the Inferior Courts, as by this Act contemplated, unless two-thirds of the Grand Jury of the County shall first recommend the same at a regular term of the Superior Court.

9. Sec. III. It shall be the duty of the Tax Collector of any County in which an extraordinary tax may be levied in the manner provided in the foregoing section of this Act, upon being required to do so by the Justices of the Inferior Court, or a majority of them, to give bond and approved security to the Justices aforesaid, or their successors in office, in a sum not exceeding double the amount of the extraordinary tax assessed, conditioned for the faithful collection and payment of the same into the Clerk's office of the Inferior Court, there to remain subject to the order and application of the Justices of the Inferior Court for County purposes; and the Collector shall be enti-

*See Act of 1835, sec. 10 et seq. of this title.
† State tax retained for several years, see "Tax." As to f. fa. vs. defaulting Collector, see title "Tax," secs. 46, 72, 86, 87.
‡ Tax for educational purposes not included, see "Academies, &c." sec. 8. Nor Poor Tax, see "Executors, &c." sec. 191.
An Act* to assess a tax on all persons exhibiting Shows of the different descriptions in the Counties of Coweta, Meriwether, Gwinnett, and Union in this State, and for other purposes therein named. Assented to Dec. 26, 1835. Pam. 285.

10. Sec. I. From and after the passage of this Act, all persons, either owners or principal managers, wishing to introduce and exhibit shows for the sake of profit or gain, in the said Counties* in this State shall pay the following tax, each and severally to the Clerk of the Inferior Court of each of the said respective Counties in which they may wish to exhibit: For exhibiting on horses the sum of twenty-five dollars; for introducing and exhibiting animals, beasts or vermin, or any other of the like description, the sum of ten dollars; for exhibiting in person, pictures, or fictitious figures the sum of five dollars.

11. Sec. II. It shall be the duty of the Clerk of the Inferior Court of the several Counties in this State on application of any person wishing to exhibit either of the above denominated shows, and on their paying into the hands of the said Clerk the amount of tax so assessed, agreeable to the provisions of this Act, on each particular show that he may wish to exhibit, to grant said applicant a certificate in his own name, setting forth the particular description of such show so to be exhibited, under his hand and the County seal, on said applicant paying him the sum of one dollar for his services; and the certificate so obtained shall be a sufficient license for the person so applying to exhibit such show in said County and nowhere else, for the term of twelve months from the date and no longer.

12. Sec. III. The money arising, agreeable to the provisions of this Act, shall be placed under the direction of the Inferior Court of the several Counties of this State, to be appropriated one half for the support of the poor, and the other half for building bridges and other County purposes.

13. Sec. IV. If any person or persons should exhibit either of the above denominated shows, without first complying with the second section of this Act, he shall forfeit and pay for each and every violation of the provisions of this Act, the several sums, viz: For exhibiting on horses, the sum of fifty dollars. For exhibiting animal, double the tax. For exhibiting in person, pictures, or fictitious figures, the sum of ten dollars.

14. Sec. V. On oath being made by any citizen of the County where such violation of the provisions of the above recited Acts has been committed, before any Judicial officer of this State, Justice of the Inferior Court or Justice of the Peace, it shall be his duty to issue a warrant of attachment against the property and effects of the person so offending, or so much thereof as will fully satisfy the amount set

*This Act made general, by Act of 1837, see sec. 18.
forth, and all cost, directed to any Sheriff, Constable or their legal
deputy to execute and return the same, and it shall be tried and gov-
erned under the provisions of the attachment law now in force in this
State; and any person so exhibiting, on being called on to show his
license from under the hand of the Clerk and County seal, and failing
or refusing to do so, shall be sufficient ground for any person to make
oath of the violation of the true intent and meaning of the provisions
of this Act, and the fine so collected, agreeable to the provisions of
this Act, shall one half go to the informer, and the other as above
provided for in the third section.

15. Sec. VI. The Clerk of the said several Counties shall record
the license so granted and the different amounts received, and shall
pay over all money received for granting such license to the County
Treasurer, or the Clerk of the Inferior Court where there is no Coun-
ty Treasurer, except his fee for issuing, and take the Treasurer's re-
cipt and record the same in his receipt book.

16. Sec. VII. Nothing herein contained shall be so construed as
to operate or interfere with the incorporation laws in this State.

17. Sec. VIII. Nothing contained in this Act shall be held to
affect or impair the powers heretofore granted to municipal corpora-
tions in this State, to prohibit, tax or license any of the shows or ex-
hibitions or other matter mentioned in this Act.

Sec. IX. All laws and parts of laws militating against this Act
be, and the same are hereby repealed.

An Act to amend an Act entitled an Act to assess a tax on all persons
exhibiting of Shows of the different descriptions, in the Counties of
Coweta and Meriwether, and Gwinnett, and Union in this
State, and for other purposes therein named, passed on the 26th day
of December, 1835.—Asseuted to Dec. 25, 1837. Pam. 257.

18. Sec. I. Be it enacted, §c. That from and after the passage
of this Act, the provisions of the above recited Act shall take effect
and go into operation in each and every County in this State, and
become a general law, any law, usage, or custom, to the contrary
notwithstanding, except that when the exhibition takes place in any
incorporated Town or Village, the tax shall go to the funds of such
corporation.

An Act to authorize the Justices of the Inferior Court of the several
Counties in this State to create and lay out any new districts, or
change and alter the lines of those already laid out.—Asseuted to

Justices Inf. Court may
appoint

19. Sec. I. Be it enacted, That from and immediately after the
passage of this Act, that whenever it shall be necessary to create and
lay out any new district in any of the Counties in this State, the
Justices of the Inferior Courts, or a majority of them of said County,*

*At a regular term. See next Act.
COUNTIES—1839-'40.

Militia Districts—How laid out and altered.

shall proceed to appoint three commissioners, who shall be citizens
of the district from which it is proposed to create or lay out the new
district, whose duty it shall be to lay out and define the lines of said
district, and report the same to the next Inferior Court of said Coun-
ty, for County purposes.

20. Sec. II. Whenever it is necessary to alter or change any of
the lines of the districts now organized, or to define the same, that
the Justices of the Inferior Court of the several Counties of this State,
or a majority of them, shall appoint three commissioners, who shall
be citizens of the districts between which the change in defining is
proposed to be made, who shall proceed to lay out or define said line,
and report the same to the next Inferior Court in said County, for
County purposes.

21. Sec. III. Whenever the commissioners appointed as con-
templated in the preceding sections of this bill, shall deem it neces-
sary, they may engage the services of a competent Surveyor to assist
in laying out any new districts, or change or define any line in pur-
suance of the foregoing sections, who shall be paid for his services
as Surveyor, out of the County treasury.

22. Sec. IV. Whenever the said Inferior Court, or a majority of
them, shall approve the report of the before mentioned commission-
ers, that they shall cause the same to be recorded on the minutes of
said Court, after which the district laid out, line changed or defined,
shall be known and distinguished as such.

Sec. V. All laws or parts of laws, militating against this Act be,
and the same are hereby repealed.

An Act amendatory of an Act entitled an Act to authorize the Justices
of the Inferior Court of the several Counties in this State to create
and lay out any new districts, or change and alter lines of those al-
ready laid out.—Assented to on the 23d Dec. 1839.—Assented to
Dec. 23, 1840. Pam. 53.

23. Sec. I. Be it enacted, That nothing in the aforementioned Act
shall be so construed as to admit of applications being made in
manner aforesaid to lay out any new district, or to change the lines
of any district already laid out, only at a regular term of the Inferior
Court.

24. Sec. II. As soon as any new district shall be regularly laid
out and formed, agreeable to the provisions of the above recited Act,
it shall be the duty of the Clerk of the Inferior Court of the County
where such district is made, to immediately inform his Excellency
the Governor of the same; all laws to the contrary notwithstanding.

Statutes omitted as obsolete, repealed or superseded. Act of 1788.
Vol. I. 446.
<table>
<thead>
<tr>
<th>Counties</th>
<th>County connected in Senatorial District</th>
<th>Congressional District</th>
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<th>Militia Division and Brigade</th>
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Table showing the number of Counties in the State, &c.

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</table>
COUNTY FUNDS AND RECORDS.*

Sec. 1. Ex-officers' liability.

" 2. Record books.
" 3. Delivery to successor.
" 4. Purchase of books.
" 5. Schedule of books.
" 6. Annual accounts.
" 7. Defaulting Clerks.
" 8. Clerks' receipts.
" 9. County funds.
" 11. Clerks' fees.
" 12. Misconduct, penalty.
" 14. Failure, malpractice.

Sec. 15. Compensation.

" 16. Transcribing records.
" 17. Incomplete records.
" 18. Lowest bidder, bond.
" 20. Judicial records.
" 22. Book of receipts, &c.
" 24. Penalty.
" 25. Public inspection.
" 27. Copies, evidence.

Act of December 13, 1809.† Vol. II. 541.

Sec. IV. The said successor shall not be liable for any papers not contained in said last schedule,‡ but his predecessor shall be liable as aforesaid, in the same manner during the time intervening between the election and commissioning of his said successor, as he was previous to said election.

2. Sec. VI. It shall be the duty of the Clerks of the Superior and Inferior Courts, and the Clerks of the Courts of Ordinary, to keep their records in books well bound. [For the rest of the Act not repealed, see County Officers, sec. 8.]

Act of December 6, 1813.§ Vol. III. 148.

Sec. I. [Repeals so much of the 2d and 3d sections of the foregoing Act, as directs the Clerks of the Superior and Inferior Courts, and Courts of Ordinary, to return a schedule of their office papers thirty days before the election.]

3. Sec. II. It shall be the duty of the Clerks aforesaid to deliver over to their successors in office respectively, all the books and papers appertaining to their respective offices, within five days after their successors are qualified. Provided, that the said Clerks shall make out and deliver to their successors in office respectively upon oath, a fair and correct schedule of all the papers relative to any unfinished business in their said offices respectively, in term bundles, and all other papers and books appertaining to said office, in good order.

Sec. III. [See "County Officers," sec. 16.]

*See "Counties," sec. 2, for proceeding against persons holding over County funds. See same title, sec. 10, for tax on shows. Also, the disposition of fines and forfeitures, sec. 3, and note thereto. For Act making proceeds of sales of escheats a part of the County funds, see "Escheats," 23, 24.

†For title see "County Officers," sec. 8. Referring to the schedule mentioned in the sections of the Act repealed, and supplied by Act of 1813. See secs. 2 and 3, this title.

§For title see "County Officers," sec. 19.
An Act to define the duty of the Justices of the Inferior Courts in regard to the Books of Record of their respective Counties; and to define the duties of the Clerks of the Superior and Inferior Courts, with respect to County funds.—Approved Dec. 16, 1815. Vol. III. 151.

Whereas, much injury may be sustained by the citizens of this State, from important matter being recorded on loose paper or books unbound, and subject to come to pieces in a short term of years,

4. Sec. I. Be it enacted, &c. That it shall be the duty of the Justices of the Inferior Courts, to purchase, or cause to be purchased, out of the County funds, a sufficient number of well bound blank volumes for the Clerks of the Superior, Inferior, and Courts of Ordinary of their respective Counties, and that it shall be their duty to letter or cause to be lettered and indexed, said volumes, as they in their judgment may think proper, and have them immediately entered on the minutes of the Court.

5. Sec. II. The Justices aforesaid, shall, at the expiration of each year, cause said Clerks to produce a schedule of the books in their respective offices, and have the same duly recorded.

6. Sec. III. It shall be the duty of the Clerks of the Superior and Inferior Courts of the several Counties in this State, to lay before the Inferior Court of their respective Counties, at the first annual session of the said Courts, a correct statement of the several sums of money received for County rates or taxes, or fines, forfeitures, impositions, license, or otherwise, in such method, as that the net proceeds of the whole revenue of such County, and the amount of the several disbursements in discharge of the several demands against such County, may distinctly appear; and if any of the said Clerks shall divert, misapply or conceal any of the money belonging to such County, he shall forfeit and pay to, and for the use of such County, double the money he shall be found so to have diverted, misapplied, or concealed, to be recovered before any Court having jurisdiction of the same;* and it shall further be the duty of said Clerks, to record such statement of County funds in proper books, to be provided at the expense of such County.


7. Sec. I. From and after the passage of this Act, it shall and may be lawful for the Justices of the Inferior Court or a majority of them, in each County, respectively, of this State, when any Clerk of the Inferior Court may or shall refuse or neglect to pay over any

*See "Counties," 2. Also "County Officers," sec 38—disqualifying from office defaulters. See also, next two Acts, and "Penal Laws" sec. 141.
money or moneys belonging to the County funds, deposited or paid to him for the use of the County for which he is the Clerk, to issue an execution against such Clerk and his security or securities, directed to the Sheriff, or officer authorized to execute the same, commanding him to levy the same on the estate both real and personal, belonging to the said Clerk and his security or securities, as the case may be, or so much thereof as will be sufficient to satisfy such execution and costs thereon, and such other proceedings shall be had thereon as are usual on other executions issued upon judgments.

An Act to compel Clerks of the Inferior Courts, that now are or hereafter may be in office, to give receipts for all sums of money by them received for County purposes; to compel County officers to take receipts for any sum or sums by them received and paid for County purposes, and return or deliver over such receipt or receipts to the Clerk of the Superior Courts of the several Counties within a certain time; and to require the several Clerks of the Superior Courts of this State to keep a fair and regular file and entry of the same, to be laid before their several Grand Juries whenever called for.—Approved Dec. 18, 1820. Vol. IV. 201.

8. Sec. I. From and after the 25th day of December, 1820, that it shall be the duty of all Clerks of the Inferior Courts of any County within this State,* to give a receipt or receipts for any sum or sums of money by them received of and from any officer, or other person whatsoever, for County purposes, or for moneys on any account belonging to the County.

9. Sec. II. It shall be the duty of all County officers, or any other person or persons who may receive any sum or sums of money arising from the sale or sales of estrays (or other means, when such money belongs to any County) shall pay the same over to the Clerk of the Inferior Court of such County,† and shall take a receipt or receipts from the Clerk of the Inferior Court of the several and respective Counties, which receipt, the officer or other person paying the money is hereby directed to demand, and the said Clerk required to give; and the officer or person paying the money and taking the receipt or receipts, shall return the same to the Clerk of the Superior Court of the County where the money was paid, within twenty days from the payment of the same.

10. Sec. III. It shall be the duty of the Clerks of the Superior Courts within this State, to receive and keep a regular and fair file in office, and entry in a book, to be kept by them for that purpose, all such receipts by them received, to be laid before their several Grand Juries whenever called for by said Grand Juries; any law or custom to the contrary notwithstanding.

*Is not this whole Act superseded by Act of 1825, providing for County Treasurers?† County Treasurer, sec. 45. "County Officers."

[1.] The Governor may remit even after payment. 1. Kelly, 606.
11. Sec. IV. For each receipt received, filed, and entered upon such book, the Clerk of the Superior Court of any County who may receive the same, shall receive the sum of twelve and one-half cents out of the County funds of such County where such receipt may be filed and entered in said book, and shall be allowed the same on presenting a statement of his account to the Inferior Court; and when passed by such Court the same shall be entered in the books of account kept by the Clerk of the Inferior Court.

12. Sec. V. For each and every neglect or violation of the foregoing Act, the party neglecting or violating the same shall upon conviction be fined in a sum of not less than one hundred dollars, nor more than five hundred dollars.

An Act to compel the Clerks of the Inferior Courts, in the several Counties in this State, annually, at the first term of the Superior Court, in their respective Counties, to make and exhibit to the Grand Jury a statement of the County funds, showing the receipts and expenditures of their said Counties for the preceding year.—Approved Dec. 22, 1823. Vol. IV. 112.*

13. It shall be the duty of the Clerks of the Inferior Courts, in the several Counties in this State annually, at the first term of the Superior Court, in their respective Counties, to make and exhibit to the Grand Jury a full and complete statement of the County funds, showing the receipts and expenditures of their said Counties for the preceding year; in which statement they shall not only specify all the moneys by them received and paid out, but the names of the persons from whom the same has been received, and for and on what account the same has been paid out.

14. Sec. II. Every Clerk failing and neglecting to comply with the requisitions of this Act may, for the said offence, be presented by the Grand Jury for malpractice in office, upon which said presentation it shall be the duty of the Attorney or Solicitor General to prosecute, as in other cases of presentments by Grand Juries, for offences punishable by law; and on conviction, the said Clerk may be fined, or fined and removed from office, at the discretion of the Court.

15. Sec. III. The Justices of the Inferior Court shall allow their said Clerks such compensation as is reasonable and just for their services required by this Act.

Sec. IV. All laws and parts of laws militating against this Act are hereby repealed.

An Act to authorize the Inferior Courts of the several Counties in this State to transcribe the records of the Superior Courts and Inferior Courts, and of the Courts of Ordinary of said Counties;

*The same query applied to preceding Act, may be made in regard to this.
Transcribing records—Suits against defaulting Clerks.

and more fully to define the duties of the Clerks of the Superior Courts and Inferior Courts; and to provide a remedy for the non-performance of such duties.—Approved Dec. 22, 1829. Vol. IV. 227.

16. Whenever it shall be made known to the Inferior Courts of the several Counties in this State that the records of the Superior Courts and the Inferior Courts, and Courts of Ordinary, or of any of said Courts in their respective Counties have become obliterated, defaced, or mutilated, it shall and may be lawful for said Inferior Courts to employ some fit person or persons to transcribe such records into new books of a substantial nature; and such records, when so transcribed, and approved by said Inferior Court upon their inspection, or upon the examination of any person or persons whom they shall appoint for the purpose, shall have all the validity and authenticity of the original records.

17. Sec. II. Whenever it shall appear to the Inferior Courts aforesaid that the Clerks of the said Courts hereinbefore mentioned have failed or neglected to copy into a book of record all the proceedings in all civil cases in said Courts respectively, or that the said proceedings have been partially and imperfectly copied, it shall and may be lawful for the said Inferior Courts to employ some fit and competent person or persons to copy the said proceedings into a book or books of record; and the said books of record shall, when approved by said Inferior Court, or by the person or persons by them to be appointed for the purpose of examination, have the same force, validity, and authenticity as if the said proceedings had been fully copied by the Clerks aforesaid, within the time prescribed in the 34th section of the Act of the General Assembly, passed on the 16th day of February, 1799.*

18. Sec. III. The said Inferior Court, in the employment of a person or persons to transcribe the records, and to copy the proceedings as hereinbefore directed, shall offer the same to the lowest bidder, due regard being had to the competency of the several persons proposing; and shall require bond with approved security, payable to the Justices of the Inferior Court of the County, and their successors in office, in a penalty to be fixed by them, or any three of them, for the completion of the contract at such time or times as shall be stipulated, and for the safe keeping and return of the books, documents, and papers that may be intrusted to him or them for the purposes aforesaid.

19. Sec. IV. The Inferior Courts shall be authorized to institute a suit or suits in the Superior Court upon the bond or bonds of any Clerk, who has failed or neglected to copy into a book of record all the proceedings in all civil cases in said Courts respectively, according to the true intent and meaning of the said 34th section of the Act aforesaid, or who shall hereafter fail or neglect to record the proceedings of said Courts as hereinafter required; and shall recover damages for the neglect or failure of such Clerk in manner aforesaid, ac-

* "Judiciary," sec. 363.
cording to the rates for recording said proceedings, in all the cases which such Clerks shall have failed, or shall fail to record, or which he shall have imperfectly recorded, or shall imperfectly record; and in case there be no valid bond of said Clerk, it shall and may be lawful for said Superior Court to cause said Clerk, by a rule or order of said Court, to pay into the hands of the County Treasurer such sum or sums of money as it shall appear to said Court that such Clerk has received, or shall receive, as fees for recording of proceedings in cases which he has or shall fail or neglect to record, or has or shall imperfectly record, and to enforce such order by process of attachment; Provided, when it shall appear that said Clerk has not received the recording fees in any case or cases, the amount of such fees shall not be included in the damages herein required to be collected, nor in the sum herein directed to be paid.

20. Sec. V. The proceedings in all cases, civil as well as criminal, as well as civil, hereafter determined in the several Courts of Law and Equity in this State, shall be fully and fairly copied by the Clerks of such Courts respectively into record-books of a substantial nature, previous to the next term of such Courts, after the adjournment of the Court in which such cases shall be determined.†

21. Sec. VI. It shall be the duty of the Grand Juries in the several Counties in this State, from term to term of the Superior Court, to inspect and examine the offices, papers, and records in the Superior and Inferior Courts of their Counties; and if the said proceedings shall not have been copied into a book or books of record according to the true intent and meaning of this Act, they shall cause the Clerk or Clerks who shall have failed or neglected to do his duty as required by this Act, to be presented for non-performance of official duty; and the said Superior Court shall order the bond of such Clerk to be prosecuted, and recovery shall be had thereon as directed in the aforesaid third section of this Act; and if there be no bond, said Court shall proceed against such Clerk as in such case is therein directed.

Sec. VII. All laws or parts of laws militating against this Act are hereby repealed.

An Act to compel all County Officers holding public moneys to keep books of record of the receipts and expenditures of the same.—Approved Dec. 26, 1831. Pam. 90.

22. Sec. I. As the public money is the property of the people, they have a right at all times to know how it is expended:

Be it therefore enacted, That from and after the passing of this Act, all County officers in each County in this State, in whose hands any money belonging to the County or State shall come, shall pre-

*See further, as to ruling Clerks, "Judiciary," subdivision "Officers of Court," sec. 380.
†By Judiciary Act of 1799, within 40 days, see "Judiciary," 363.
(1.) The motion docket is not a record. 1 Kelly, 250 4 Ga R. 157.
pare and keep a fair, good and substantial leather bound book, in
which they and each of them shall enter in a regular and distinct
manner, all moneys by them received on account of the State or
County, or from any other public source, in such a way as may be
seen how much and at what time the said money was received, and
in like manner how the same has been expended or disbursed, with
the items of each expenditure; and at the expiration of every three
months, the debit and credit side of such account shall be struck, so
that the state of the account may be known.*

23. Sec. II. It shall be the duty of the County Treasurer, or if
none has been appointed, then the Clerks of the Superior or Inferior
Courts, acting as such, shall at every second term in each County,
lay before the Grand Jury a fair abstract from said book.

24. Sec. III. In case of neglect or failure of any of the aforesaid
persons to perform the duties hereby assigned them, then and in
such case, they shall be liable to a fine of $20 for each offence, to be
recovered in any Court of record having competent jurisdiction; the
whole penalty to go to the person prosecuting the party offending.

25. Sec. IV. During the legal office hours, all persons shall have
access to and a right to inspect the aforementioned books, and to take
extracts therefrom, and the person keeping the same shall be entitled
to receive twenty-five cents for each inspection; and should any of
the aforesaid officers refuse any citizen an inspection of said books,
such officer so offending, shall be liable to the penalty and prosecu-
tion as prescribed in the above named section.

An Act to authorize the Inferior Courts of the Counties of Chero-
kee, Cass, Cobb, Paulding, Floyd, Walker, Murray, Gilmer,
Union and Lumpkin, to procure copies of the original records of
the Superior and Inferior Courts of originally Cherokee County,
which are now in the Superior and Inferior Clerk's offices of
Forsyth County, and to legalize the same.—Assented to Dec. 25,
1837. Pam. 219.

Records to
be transcrib-
ed for cer-
tain Coun-
ties.

Compari-
sons of copies.

it enacted, That from and after the passage of
this Act, the Justices of the Inferior Courts of the Counties of Chero-
kee, Cass, Cobb, Paulding, Floyd, Walker, Murray, Gilmer, Union,
and Lumpkin be, and they are hereby authorized to employ some fit
and proper person to transcribe into good and well bound books, pur-
chased for that purpose, by said Inferior Courts, all the original re-
cords of the Superior and Inferior Courts of originally Cherokee
County, while and during the time that the aforesaid Counties, com-
posed a part of the original County of Cherokee, and that the same,
when procured, shall be deposited in the Superior and Inferior Clerk's
offices in the Counties procuring the same.

27. Sec. II. The Clerks of the Superior and Inferior Courts of
Forsyth County, who have possession of the original records, and
the person employed to transcribe the same, shall compare the origi-

*See Act of 1835, providing for County Treasurers, "County Officers," sec. 45.
nal records and copies, and said Clerks shall certify, in all of the books of transcript, that they are true and correct copies of the original records, and a certified copy of any instrument or transaction recorded in said books, shall be received and held as legal evidence in any Court in this State, any law to the contrary notwithstanding.

COUNTY OFFICERS.*

Sec. 1. Removal of Sheriffs.
" 2. Constable’s oath.
" 3. Election of officers.
" 4. Vacancies.
" 5. Taking Sheriffs’ bonds.
" 6. Office of Clerk at Court house.
" 7. Penalty for neglect.
" 8. Officers not interim.
" 10. Election of Tax R. and C.
" 11. Appointment C. C. O.
" 12. Appointment of Bailiff.
" 15. Qualification in 10 days.
" 16. Ex-officers subject to order.
" 17. Informations entered.
" 18. Certain acts made valid.
" 20. By whom taken.
" 22. Constable’s Bond.
" 23. Oath to Constable not taken.
" 24. Omission shall not avoid.
" 25. To be taken.
" 27. Deputy Clerk.
" 28. Constable’s bonds.
" 30. J. P.—election, removal, &c.
" 31. Place of election.
" 32. Vacancies.
" 33. Vacancy C. C. O.
" 34. Registry of births.
" 35. Parents’ right.
" 36. Penalty on Clerk.
" 37. Registry evidence.
" 38. Defaulters not commissioned.

* Most of the duties of the County officers are so connected with other titles as not to allow them to be collected under this head. To these various titles, reference must be had.

For fees of County officers, see title “Fees.”
For Acts in relation to County funds and records, see that title.
As to embezzlement of County funds by County officers, see “Penal Laws,” sec. 141.

Sec. I. and II. [Repealed. See sec. 4, and amendment of the Constitution, Vol. II. 515.]

1. Sec. III. On the representation of two-thirds of the Justices of the Inferior Court, and of the County, or by sentence of impeachment, his Excellency the Governor be and he is hereby authorized to remove any of the aforesaid Sheriffs from office; and he shall and may remove from office any Coroner or County Surveyor, on like representation of two-thirds of the Justices of the Inferior Court and of the County; the Governor shall and may also remove any of the aforesaid Clerks,* County Surveyors or Coroners from office on conviction of the offender or offenders, for malpractice in office.

Sec. IV. [Superseded.] [Constable’s oath.]

Where no candidates to be drawn for, $40 for refusing to serve.


Sec. II. In future, all elections for County officers, to wit, the Clerks of the Superior and Inferior Courts, Sheriffs, Coroners,† and County Surveyors, shall be by the citizens of the respective Counties, who are entitled by law to vote at elections for representatives, or members of the Legislature of this State; and shall be opened, conducted, and closed in the same manner, that elections are for members of the Legislature of this State.

Sec. III. If a vacancy should take place in one of the aforesaid offices, it shall be the duty of the Justices of the Inferior Court, or any two or more of them, to give notice in one or more of the

* "Of the respective Counties," in sec. 1.
† As to the election, qualification and duties of Coroners, see further, title "Judiciary," sec. 259.
public gazettes, or at the Court house, and three or more of the most public places in the County within which such vacancy may happen, twenty days previous to the election for filling up the said vacancy: and the person so chosen shall continue in office no longer than his predecessor would have done.* And where any two or more candidates for any County office shall have the highest and an equal number of votes, the presiding Justices shall certify the same to his Excellency the Governor, who shall be, and he is hereby authorized to appoint one of the persons so having an equality of votes.†

An Act to amend the Judicial Act.—Approved May 11, 1803. Vol. II. 112.

Whereas, doubts have arisen respecting the proper persons authorized, or intended by law to take the bonds or obligations of the Sheriffs of this State: For remedy whereof,

5. Sec. I. Be it enacted, &c. That every Judge of the Superior, or a majority of the Justices of the Inferior Courts, of the respective Counties throughout this State, is and are, and by intendment of law,† ought to have been taken, held, deemed, and considered as competent in law, to take the bonds or obligations of Sheriffs, and to qualify them as by law directed.‡

An Act to compel the Clerks to keep their offices at the Court house of their respective Counties, or within one mile thereof.—Approved Dec. 7, 1807.§ Vol. II. 404.

Whereas, great inconvenience has hitherto been experienced by the citizens of this State from the great distance at which many of the Clerks keep their offices from the Court house, many records and other papers being frequently necessary to the fair investigation of a cause in Court, that are lodged in the office, and their absence necessarily delaying justice, and sometimes utterly defeating it; for remedy whereof,

6. Sec. I. Be it enacted, &c. That from and after the first day of June next, it shall be the duty of the Clerks of the Superior and Inferior Courts, and the Clerks of the Court of Ordinary, to keep their offices, books, and papers, at the Court house of their respective Counties, or within one mile thereof, except the Counties of Glynn, Effingham, Bryan, and Bulloch, and except the County of Wilkinson, until the public buildings be made permanent.

*See sec. 8.
†Repealed as to Sheriffs and Clerks, Tax Collectors and Receivers, by Act of 1826. See sec. 52; See also, Act of 1842, sec. 69 of this title, authorizing the Judge of the Superior Court to appoint them in certain cases.
‡See Act of 1815, making it the duty of the Judges of the Superior Court to inspect the Sheriffs' bonds and have them recorded, sec. 71.
§A large number of Counties have been exempted totally or partially from the operation of this Act. See local Acts.

(1) Bond approved by two Justices, not good as a statutory bond. 6 Ga. 532. Need not be attested by three. 9 Ga.
7. Sec. II. Each and every of the said Clerks, except as before excepted, shall forfeit and pay the sum of $30 for every month they, or either of them, shall fail to comply with the requisitions of this Act, to be recovered in the Superior Court, on motion of the Attorney or Solicitor General, by attachment as for contempt, and to be considered as a part of the County funds.

An Act to authorize the Clerks of the Superior and Inferior Courts, Clerks of the Courts of Ordinary, Sheriffs, Coroners, and Surveyors, to hold their offices during the intervention between the election and commissioning of their successors, and to regulate the transfer of papers and moneys.—Approved Dec. 13, 1809. Vol. II. 541.

Whereas, considerable evils may result from the suspension of duties incumbent upon the Clerks of the Superior and Inferior Courts, Clerks of the Courts of Ordinary, Sheriffs, Coroners, and County Surveyors; for remedy whereof,

8. Sec. I. Be it enacted, &c. That the aforesaid officers shall perform all the duties of their respective offices during the time intervening between the election and commissioning of their successors, with all the responsibilities to which they were liable, previous to the said election.¹

Sec. II. and III. [Repealed. For Secs. IV. and VI. see County funds and records, sec. I.]

9. Sec. V. It shall be the duty of the officers elected, as aforesaid, to make application to the Executive for their respective commissions, within twenty days after their having been elected to either of the said offices.†

An Act to point out the mode of electing a Receiver of returns of taxable property and Tax Collector for the several Counties of this State.—Approved Dec. 15, 1810. Vol. II. 663.

10. Sec. I. On the first Monday in January annually, the electors in the several Counties in this State, entitled to vote at the general elections, be, and they are hereby authorized and required to elect by ballot at the Court houses of the respective Counties, a Receiver of returns of taxable property, and Tax Collector for each County in this State, which said election shall be held under the direction of three Justices of the Peace, who shall transmit all returns of said elections to the Governor for the time being, in twenty days, who shall commission such person or persons so elected.‡

*For the duties of County Surveyors, see title "Land."
†See Act of 1811, sec. 15, and Act of 1823, sec. 40; see also Act of 1826, as to filling vacancies in certain cases.
‡Justices of Inferior Court not to be Collectors or Receivers, see "Tax," sec. 47. On failure to elect, Justices of Inferior Court may appoint, see "Tax," 114.

(1) The new officers cannot enter on their duties until commissioned. 8 Ga. 368.
COUNTY OFFICERS—1811.


An Act for the election of the Clerk or other person in whom the care of the records and other proceedings of the Court of Ordinary is vested.—Approved Dec. 13, 1811. Vol. III. 137.

11. The Justices of the Inferior Court in the several Counties throughout this State, at the usual place of holding their Courts on the first Monday in January, in the year 1813, and on the first Monday in January in every second year thereafter, shall proceed by ballot to the choice of Clerks of the Courts of Ordinary, who shall hold their office for and during the term of two years, unless sooner removed for malpractice in office, and until a successor is in manner aforesaid elected. And it is hereby provided, that the Clerk in manner aforesaid elected, shall be eligible to re-election.


12. Sec. XXVI. The Justice or Justices in any district having no Constable, is, or are hereby authorized and empowered to appoint not exceeding two fit and proper persons within the said district, to whom they shall administer the oath of office, who shall give bond and security as pointed out by law. And the person or persons so appointed shall continue in office until the next Inferior Court, and until a successor is duly appointed and qualified.‡

An Act to alter the time of holding the Elections of County Officers in this State, &c.—Approved Dec. 16, 1811. Vol. III. 135.

13. Sec. I. The elections for Sheriffs, Clerks of the Superior and Inferior Courts, County Surveyors, and Coroners of the respective Counties within this State, shall be held on the first Monday in January, 1814, and on the first Monday in January every second year thereafter, in each and every of the said Counties respectively.

An Act to regulate the appointment of Jailers, and to alter and explain another Act. [See Judiciary, 171.]—Approved Dec. 16, 1811. Vol. III. 140.

14. Sec. I. In future all Sheriffs, on appointing a keeper of the jail, to [shall] require sufficient security of him or them; and such person appointed shall, before he enters on the duties of his or their office, take and subscribe the following oath before some one of the

*See also Act of 1832, sec. 67, for provision in case of failure to elect on that day. For the Act requiring Clerks of Courts of Ordinary to keep a file of newspapers containing legal notices, see "Executors," &c. sec. 16.
†For title and remaining sections, see "Justices of the Peace," &c.
‡But see Acts of 1834 and 1838, sec. 58–61 of this title.

[1.] Where a new Court had been elected, but not qualified, the election of Clerk by the old Court was legal and valid. 7 Ga. Rep. 473
Jailer's oath. Justices of the Inferior Court of said County; to wit: "I, A B, do solemnly swear or affirm (as the case may be,) that I will well and truly do and perform all and singular the duties of Jailer for the County of ———; and that I will humanely treat all criminals who may be brought to jail, of which I am the keeper, and not suffer them to escape by any negligence or inattention of mine: So help me God."* [For the other section, see Judiciary, sec. 176.]

An Act to compel the [officers named in the Act] to take the oath, and give the security required by law, within the time therein specified.— Approved Dec. 16, 1811. Vol. III. 141.

Whereas, by the laws now in force in this State, some inconvenience has, and may again happen with respect to the time which ought to be given to the Clerks elect, [and other officers named in the Act] to qualify; for remedy whereof,

15. Sec. I. Be it enacted, &c. That from and immediately after the passing of this Act, the said Clerk of the Superior and Inferior Courts, Sheriffs, County Surveyors, Coroners, Collectors, and Receivers of tax returns, shall be bound in ten days after they are notified of the arrival of their commission, to take the oath, and give the security required by law.†

Sec. II. [Superseded by Act of 1823. See sec. 37 of this title.]

An Act to amend and repeal the 2d and 3d sections of an Act, [for title see sec. 18.]—Approved Dec. 6, 1813. Vol. III. 149.

Secs. I. and II. [See County Funds and Records, sec. 3.]

16. Sec. III. All Sheriffs, Coroners, and Clerks of any of the Courts of this State, shall at any and all times be subject to the order and rule of said Courts, after they have retired from their respective offices, in such cases and in like manner as they would have been had they remained in office.

An Act to legalize and make valid the acts and proceedings of Sheriffs and Clerks in this State in certain cases therein expressed.—Approved Dec. 6, 1813. Vol. III. 145.

Whereas, the XLVIth section of the Judiciary law of this State, passed in the year 1799, requires that before any Sheriff shall enter upon the duties of his appointment, and being commissioned by the Governor, he shall be bound for the faithful performance of his duty by himself and deputies before any of the said Judges, to the Governor of the State for the time being, and to his successors in office, jointly and severally, with two good and sufficient securities, inhabi-

*For Act in reference to medical attendance, &c. to prisoners, see "Penal Laws," sec. 395.
†See Act of 1823, sec. 40 of this title.

[1] A bond voluntarily given after the time expires, is good as a Common Law bond. 1 Kelly, 574.
tants and free-holders of the County, to be approved of by the Judges of the Inferior Court, or any three of them, in the sum of twenty thousand dollars. And whereas, a custom has heretofore prevailed with the Executive department of this State in issuing the *dedimus potestatum* to qualify the Sheriff, to direct the same only to two or more Justices of the Inferior Courts of the several Counties, in consequence of which the bond in many cases given by the Sheriffs and their securities do not appear to have been attested by, or approved by more than two Justices of the Inferior Courts; and as doubts and difficulties may, and probably will at some future day, arise respecting the legality of the acts and proceedings of Sheriffs, when their bonds do not appear to have been approved by more than two Justices as aforesaid, and the proceedings of the Courts in the several Counties may be called into question; for remedy whereof,

17. Sec. I. *Be it enacted;* &c. That in all cases where persons have been elected Sheriffs in the several Counties in this State, and have been commissioned by the Governor, taken the oath of office, and have given bond and security which has been approved by any one or more of the Justices of the Inferior Courts in the County in which such person shall have been elected and commissioned, and the person so commissioned and qualified has acted as Sheriff, that then and in that case, all official acts done and performed by him or his deputies, and all judicial proceedings in the Courts in the several Counties during the time such person acted as Sheriff shall be taken, held, and deemed as legal and valid as if the aforesaid Act of 1799 had been duly complied with in taking the bond and otherwise qualifying the Sheriffs aforesaid; any law, usage, or custom to the contrary notwithstanding.*

And whereas, some doubts exist with regard to the legality of the official acts of the several Clerks and Sheriffs of the different Counties in this State, which have been transacted since the 18th day of October last:

18. Sec. II. *Be it therefore enacted,* That all official acts of any and all Sheriffs and Clerks in this State since the aforesaid 15th day of October last, shall be deemed, held, and considered as legal and valid in law, as if such doubts had not, or did not exist; and they shall continue to act in their several official capacities until their successors are elected, commissioned and qualified.*

An Act to compel the Clerks of the Courts of Ordinary to give Bond and Security for the faithful performance of their duty.—Approved Dec. 8, 1815. Vol. III. 150.

19. Sec. I. From and after the 1st day of January next, it shall not be lawful for any Clerk of the Court of Ordinary to exercise the duty of that office until they shall have respectively given bond and sufficient security to the Justices of the Inferior Courts of each Coun

*See "Evidence," sec. 18.*
ty respectively, made payable to his Excellency the Governor, for
the time being, and his successors in office, in the sum of $2,000,
for the faithful performance of their duty respectively.

20. Sec. II. It shall be the duty of the Justices of the Inferior
Courts of each County in this State respectively, or any two or more
of them, to take such bond and security, according to the provisions
of the foregoing section, conditioned well and truly to perform the
duties required of them by law.

21. Sec. III. The said bonds, so taken as aforesaid, shall be
liable to suit and recovery in the same way, and under the same pro-
visions and restrictions as are pointed out by law, for recovery upon
bonds given by Clerks of the Superior and Inferior Courts for the
performance of their duty as Clerks.

An Act to amend the Vth Section of an Act for the appointment of
County Officers. [See sec. I. of this title.]—Approved Dec. 13,
1816. Vol. III. 152.

Whereas, the said Vth section of the Act aforesaid, points out the
mode of appointing Constables for the several Counties in this State,
and directs the manner of their giving bonds, but points out no mode
by which the bonds can be sued, in case of the neglect of duty in
said Constables—for remedy whereof:

22. Be it enacted, &c. That all Constables hereafter appointed,
shall, before they enter upon the duties of their appointments, take
the oath prescribed by the said Vth section of the Act above recited,
before any Justice of the Inferior Court or Justice of the Peace: and
those Constables resident in the Cities of Augusta and Savannah,
give bond with two or more good and sufficient securities, in
the sum of $400,* to the Justices of the Inferior Court of the Coun-
ts of Richmond and Chatham, conditioned for the true and faithful
discharge of the duties of their office; and all other Constables shall
give bond in the sum of $200,* for the faithful discharge of the duties
of their office, payable to the Justices of the Inferior Courts of the
respective Counties, which bond, or bonds so given, shall be deposit-
ed in the Clerk's office of the Inferior Courts of the respective Coun-
ts in this State,† and be taken by or before any Justice of the
Peace, and may be sued by order of the Inferior Court, upon the ap-
lication of any person or persons who shall make it satisfactorily ap-
pear that they have been injured by the misconduct or neglect of
duty in said Constable; which suit shall be brought in the Superior
Courts, for the use of the person or persons so injured—any law to
the contrary notwithstanding.

An Act to legalize the proceedings of the Superior and Inferior
Courts of the respective Counties of this State, and to render valid

*But see Act 19th Dec. 1818, sec. 23. Also Act of 1829, sec. 58.
†And recorded, sec. 73. See Act of 1850, as to certificate, sec. 74.
county officers—1816.

the acts of the public officers of the same.—approved dec. 18, 1816. vol. iii. 154.

23. sec. i. the judicial proceedings of the superior and inferior courts of the several counties in this state, as well as the acts of the sheriffs, clerk's, 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 16th day of february, 1799.

24. sec. ii. 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.

25. sec. iii. all officers, civil and military, in this state, shall take an oath to support the constitution of this state, and of the united states; and the form of said oath, so to be taken and subscribed, shall be forwarded with the dehinctus to qualify the said officer, or be taken and subscribed at the time of receiving said commission.

sec. iv. [repeals the former act on this subject. vol. i. 377.]

an act to vest the appointment of commissioners of academies, vendue masters, notaries public, and lumber measurers, in certain persons therein mentioned.—approved dec. 18, 1816. vol. iii. 1072.

whereas, the present mode of appointing the aforesaid officers is very inconvenient, and occasions an unnecessary consumption of the time of the legislature;

26. be it enacted, &c. that from and after the passing of this act, the appointment of commissioners of academies in this state, shall be, and is hereby vested in the commissioners of the respective academies; the appointment of vendue masters, notaries public, and lumber measurers, shall be and is hereby vested in the commissioners of the respective incorporated towns, or the persons in said towns in whom the corporate powers are vested; and where there is no corporation or commissioners, the appointment of the said vendue masters, notaries public, and lumber measurers, shall be made by the inferior courts of the respective counties, whenever such officers are deemed necessary and authorized by law.*

sec. ii. [superseded by act of 1823, sec. 41.]

*see acts of 1823 and 1824, secs. 41, 43 of this title. by the latter the appointment of notaries public is exclusively in the inferior court. see title "auctions," for laws regulating vendue masters.

Whereas, considerable inconvenience arises to the good citizens of this State, in consequence of the non-appointment of deputies by the Clerks of the Superior, Inferior, and Corporation Courts, and the Courts of Ordinary of this State; for remedy whereof,

27. Be it enacted, &c. That immediately from and after the passing of this Act, the said Clerks shall be allowed to appoint a deputy or deputies, in the same manner and under the same rules and regulations as deputies of Sheriffs are now by law appointed, who may continue in office during the term of his or their said principal or principals, unless specially removed: Provided always, that in case of the death, resignation, or disability of the said principal Clerk or Clerks, the power and authority of the said deputy or deputies shall cease and determine: And that the said several principal Clerks shall, in all cases, be responsible for the acts of each and every of their said deputies and agents.*

An Act to extend the power of Sheriffs and Constables in certain cases.—Approved Dec. 19, 1818. Vol. III. 162.

SEC. I. [See “Judiciary,” sec. 87.]
SEC. II. [Justices of the Peace, sec. 32.]

28. SEC. III. Each and every Constable shall give bond with two or more securities, to be judged of by the Justices of the Peace in their respective districts, in the sum of $500, (unless said district be in a town, and in that case $1,000) for the faithful performance of the duties of their office of Constable.

An Act to carry into effect the 4th and 5th sections of the 3d article of the Constitution of the State of Georgia.—Approved Dec. 21, 1819. Vol. III. 393.

29. SEC. I. There shall be five Justices of the Inferior Court in and for each County in this State, who shall be elected on the 3d Tuesday in October, in the year of our Lord, 1821, who shall be commissioned, and hold their respective offices until the 1st Monday in January, in the year of our Lord, 1825, and until their successors shall be elected and qualified; on which said first Monday in January, 1825, the Justices of the Inferior Courts shall be again elected, and from thence on the first Monday in January in every fourth year thereafter, by the electors entitled to vote for members of the General Assembly; which elections shall be held and conducted in the same

*As to acts of minor deputies, see Act of 1821, sec. 42 of this title. See also “Evidence,” 4 to 7, as to deeds recorded by deputies.

(1.) A bond with one security good as a voluntary bond. 5 Ga. Rep. 569.
manner as pointed out by law for the election of Clerks and Sheriffs; and the persons so elected shall be commissioned by the Governor, and continue in office for the term of four years, and until their successors are elected and qualified, unless removed by impeachment for malpractice in office, or by the Governor on the address of two-thirds of both branches of the General Assembly; and when any vacancy shall happen, by death, resignation, or otherwise, of any of the Justices of the Inferior Court, it shall be the duty of two or more of the Justices of the Inferior Court, or Justices of the Peace, of the County in which such vacancy or vacancies shall happen, to give at least twenty days' notice, by advertisement at three or more public places in such County, previous to the election, to fill such vacancy or vacancies; which election shall be held and conducted in the same manner as by this Act expressed.

30. Sec. II. There shall be two Justices of the Peace in each Captain's district in the several Counties of this State, who shall be elected on the first Saturday in January, 1821, and on the first Saturday in January every fourth year thereafter, by the citizens of the district to which they respectively belong, entitled to vote for members of the General Assembly; which elections shall be superintended by three freeholders of the district, whose duty it shall be to take the following oath, to be administered by the Captain or commanding officer of said district, or any Magistrate of the County, (to wit:)

"I, A B, do solemnly swear, that I will, to the best of my abilities, superintend the election of Justices of the Peace for this district: So help me God." And said freeholders shall transmit a return of said election, within twenty days, to his Excellency the Governor, who is hereby authorized to commission the person or persons so elected accordingly; and the said Justices of the Peace shall hold their appointments during the term of four years, and until their successors are elected and qualified, unless they shall be removed by conviction on indictment in the Superior Court for malpractice in office, or for any felonious or infamous crime, or by the Governor on the address of two-thirds of each branch of the General Assembly; and when any vacancy or vacancies shall happen, by death, resignation, or otherwise, of any Justice or Justices of the Peace, it shall be the duty of one Justice of the Peace, and two freeholders, which said freeholders, previous to holding said election, shall take the oath above prescribed, to advertise in three of the most public places in the district where such vacancy or vacancies may happen, the time of holding an election for the purpose of filling such vacancy or vacancies, and give at least fifteen days' notice of the time and place when such election shall be held; and it shall be the duty of the said Justice and freeholders to superintend such election, and certify the same under their hands to his Excellency the Governor, who shall, within ten days after receiving the same, commission the person or persons having the highest number of votes: Provided the election is not contested.

[1.] A certified copy from the records of Executive office is the best evidence as to the fact of a Justice of the Peace not being in office during a particular time. 5 Ga. Rep. 6.
31. Sec. III. All elections for Justices of the Inferior Court shall be held at the place of holding the Superior Courts in the respective Counties; and all elections for Justices of the Peace shall be held at the usual place of holding the Justice's Courts in the respective company districts.

32. Sec. IV. Where any person or persons shall be elected to fill the vacancy of any Justice of the Inferior Court, or Justice of the Peace, the person so elected and commissioned shall continue in office only for the time for which their predecessors were elected.


33. Sec. II. When any vacancy shall happen in the office of Clerk of the Court of Ordinary, by death, resignation, or otherwise,† it shall and may be lawful, and it is hereby made the duty of the Justices of the Inferior Courts, or a majority of them, in the County where such vacancy may happen, to proceed without delay to appoint some fit and proper person to fill such vacancy, administer to the person so appointed the same oaths, and take like bond and security as heretofore required by law of the Clerks of the Courts of Ordinary of this State, and transmit the same to his Excellency the Governor; and the person so appointed shall be deemed, hold, and considered as duly qualified to discharge all the duties required of the Clerk of the Court of Ordinary of the County for which he may be appointed, and shall be entitled to the same fees, and be subject to the same pains and penalties for misconduct in office, as if such person had been duly elected and commissioned by his Excellency the Governor, and continue in office for and during the term for which his predecessor was elected, and until a successor shall be duly elected, commissioned and qualified.

[For the remainder of this Act, see "Executors, Administrators, &c." sec. 98.]

An Act to establish an office for recording the Births of the citizens of this State, in each County of the said State.—Approved Dec. 19, 1823. Vol. IV. 113.

Whereas, much inconvenience has been experienced in this State from the difficulty of obtaining testimony of the ages of persons interested in questions of rights before our Courts; and whereas, embarrassing difficulties frequently impede the correct administration of justice on this subject; for remedy whereof,

34. Be it enacted, That from and immediately after the passing of this Act, it shall be the duty of the Clerks of the Courts of Ordinary, in each County respectively, to enter and register in a book, to be kept for that purpose, the names of all persons who may report themselves to him, or who may be reported by their parents or guard-

* For title, see "Executors, Administrators, &c. sec. 98.
†Where has been a failure to elect, see Act of 130), sec. 67 of this title.
ians, as well as all those who may he hereafter born within the said County, and who may be reported as aforesaid, upon due proof being made by affidavit or oath to the said Clerk of the said birth; and that the said Clerk shall be entitled to take and receive for each registry which he shall be called on to make, the sum of twenty-five cents.

35. Sec. II. The parents or guardians of children now in life, or who may be hereafter born, may, upon application to the Clerk of the Court of Ordinary aforesaid, and upon payment of the aforesaid sum to the said Clerk, require him to enter the name of the said child, with the time and place of his or her birth.

36. Sec. III. The said Clerk shall forfeit and pay the sum of five dollars for each and every refusal to enter the said births as aforesaid, upon such application as aforesaid being made.

37. Sec. IV. The said entry so as aforesaid made, shall be received and held as evidence of the birth and age of such person or persons as it purports to represent, in any Court of Law or Equity in this State, by the production either of the original book of entry, or of the certificate of the same, under the hand and seal of the said Clerk; and for which certificate the said Clerk shall receive twenty-five cents.

An Act to carry into effect the sixth section of the fourth article of the Constitution.—Approved 20th Dec. 1823. Vol. IV. 296.

38. No Collector, Sheriff, Coroner, Clerk of the Superior Court, Clerk of the Inferior Court, or any other person who is or may be a holder of public moneys, and elected to any office, shall be commissioned by the Governor, or be qualified by any Judge, Justice of the Inferior Court, or Justice of the Peace, until he shall produce to his Excellency the Governor, and also the Judge or Justice of the Inferior Court, or Justice of the Peace before whom he appears to be qualified, a certificate from the Treasurer of the State, countersigned by the Comptroller General, certifying that he has accounted for and paid into the Treasury all sums for which he is accountable and liable; which certificate shall in each and every case accompany the dedimus potestatem.

And whereas, various persons are holders of public moneys, where no evidence exists in the Treasurer's or Comptroller's office of such fact;

39. Sec. II. In addition to the oath of office, the person elect shall swear that he is not the holder of any public moneys accounted for.

40. Sec. III. All Collectors and other officers hereafter elected shall apply for and obtain their commissions and certificates, and qualify, within the time and in the manner heretofore pointed out by law,* or their offices shall be considered as vacant, and shall be

*See secs. 9 and 15, of this title.
filled in such manner as is now prescribed by law; and the person who has failed to obtain his commission and certificate aforesaid, within the time prescribed by law, shall not be considered as entitled to be a candidate for the office; *Provided, that this Act shall not be construed to affect the election of any Collector who may be in arrear for the amount of his insolvent list only, and who have not had an opportunity of having such list allowed from the failure of any Court.


41. From and after the passing of this Act, the Inferior Courts, corporations, and commissioners, respectively, as mentioned in the above recited Act, shall have the exclusive power of appointing any number of the officers therein mentioned,* that they may deem expedient in their respective Counties and Towns, where the number is not defined or limited by law. And also the exclusive power of filling all vacancies which may occur among such of said officers whose numbers are limited by law.

Sec. II. [Repeals all repugnant Acts, and confirms appointments subsequently made by the Legislature.]

An Act to legalize the acts of deputy Clerks of the Superior and Inferior Courts and Courts of Ordinary, under the age of twenty-one years.—Approved 20th Dec. 1824. Vol. IV. 113.

42. From and immediately after the passage of this Act, all the acts heretofore done by the deputy Clerks of the Superior, Inferior, and Courts of Ordinary in this State, under the age of twenty-one years, be, and the same are hereby made as legal and valid as if such deputy Clerks, at the date of such acts, had been twenty-one years of age; *Provided, that nothing herein contained shall be construed to exempt the principal Clerks from any liability their deputies may have incurred.

An Act to vest in the Inferior Courts of the several Counties of this State the exclusive right to appoint Notaries Public for their respective Counties.—Approved 20th Dec. 1824. Vol. IV. 214.

43. From and immediately after the passing of this Act, the Justices of the Inferior Courts of this State shall have the sole and ex-

*See Act of 1824, as to Notaries Public, sec. 43; see also Act of 1816, sec. 25. As to their administering oaths, see "Conveyances," sec. 71.
exclusive right to appoint Notaries Public for their respective Counties, and to qualify the person or persons so appointed, by administering to him or them the oath prescribed by law, as heretofore administered to Notaries Public.

44. Sec. II. It shall be the duty of the Clerks of the Inferior Courts of the several Counties of this State, to keep a register of the names of persons appointed Notaries Public by virtue of this Act, in their respective Counties; and said Clerks shall be entitled to have and receive from the person so appointed, as a compensation for the service so rendered, the sum of two dollars.

Sec. III. All laws and parts of laws militating against this Act Repealing clause are hereby repealed.

An Act to appoint County Treasurers and define their duties.—Approved 24th Dec. 1825. Vol. IV. 131.

45. The Justices of the Inferior Court in the several Counties in this State, may, on the first Monday in January next, and biannually on the first Monday in January, or as soon thereafter as convenient, appoint some fit and proper person other than the Clerk of the Inferior Court,* as County Treasurer, who shall, before he enters upon the duties of his office, give bond with security to the Justices of the Inferior Court for the faithful discharge of his duty, in such sum as they shall prescribe, not less than double the amount of funds in hand and the annual revenue of the said County; and shall, moreover, take an oath well and truly to discharge the duties of his said office.

46. Sec. II. It shall be the duty of Tax Collectors, Sheriffs, Clerks of the Superior and Inferior Courts, Justices of the Peace, Sheriffs, and all and every other person or persons who may have, or hereafter shall have, in his or their hands, any money belonging to the said County, to pay the same over to the said County Treasurer on or before the 15th day of December in each and every year, and on failure thereof to pay twenty per cent. interest on all sums which they, on final settlement, may be in arrears for, who shall give a certificate of the same, directed to the Clerk of the Inferior Court, who shall receive the same and receipt therefor, and shall enter the amount of the said certificate in a book to be kept for that purpose, together with the name of the person in whose favor it is given, and shall keep the same on file in his office.

Sec. III. [See Taverns and Retailers, sec. 6.]

47. Sec. IV. It shall be the duty of the County Treasurer to pay without delay all orders passed by the Inferior Court and directed to him, provided he has funds so to do,¹ and shall, upon paying

*Explained by Act of 1833, sec. 65 of this title. In many Counties, elected by the people; see Local Acts, as to each County.
†See County Funds and Records, for various Acts in relation to defaulters with County funds.

[1.] And he cannot defend, for any causes which have already been adjudged against the Inferior Court. Coleman, Treasurer, vs. Neal. 8 Ga. Rep. 500.
the same, take a receipt upon such order; for his justification, and shall keep the same on file in his office.

48. Sec. V. The said County Treasurer shall keep a book in which he shall exhibit on the debtor side all sums of money paid out by him, the time when paid, and the persons to whom paid; and upon the credit side all sums of money received by him, the persons from whom received, and on what account the same has been received, which book shall at all times be open to the inspection of the Court, or any person interested.

49. Sec. VI. It shall be the duty of such County Treasurers to exhibit to the Grand Jury at the Superior Court first held in each year, a statement of the County funds, containing a detailed account of the several objects and amounts of expenditures, with the vouchers therefor, including the balance, either way, from the year preceding; and the Justices of the Inferior Court, or a majority of them, shall have power to issue execution against such County Treasurer and his securities for the amount in his hands, on his failing to pay or account therefor within ten days after written notice from such Justices to that effect.

50. Sec. VII. Nothing in this Act shall be so construed as to abrogate the office of trustees of the poor school fund, created by the Act approved the 22d of December, 1823,* or to interfere with the academy funds of the County.

51. Sec. VIII. The Inferior Court shall pay to the said Treasurer such sum for his services as may appear to them to be reasonable and just, so as not to exceed two and a half per cent. on any moneys received by him, neither shall he exceed that amount for disbursing the same.

An Act to alter the mode of filling the vacancies of Sheriffs, Clerks of the Superior and Inferior Courts, and Tax Collectors; and provide for filling the vacancy of Receiver of Tax Returns.—Approved 26th Dec. 1826. Vol. IV. 297.

52. From and immediately after the passage of this Act, when any office of Sheriff, Clerk of the Superior or Inferior Court, Tax Collector, or Receiver of tax returns in any of the Counties of this State, may become vacant by death, resignation, or otherwise, it shall be the duty of the Justices of the Inferior Court, or any two or more of them, to give notice at the door of the Court house and at three or more of the most public places of said County within which such vacancy may happen, twenty days previous to said election, for filling said vacancy; which said vacancy shall be filled by persons entitled to vote for members of the Legislature of said County; and the person so elected shall be commissioned by the Governor, in conformity with the laws now in force in this State on that subject; and the person so chosen shall continue in office no longer than his predecessor would have done.

*Office abolished by Act of 1843, see Academies, &c. sec. 6.
53. Sec. II. When any two or more candidates for any of the aforesaid offices may have the highest and an equal number of votes, the presiding Justices or superintendents at said elections shall certify the same to the Justices of the Inferior Court of the County where such election may be held; whose duty it shall be forthwith to advertise another election, giving notice as prescribed in the first section of this Act.

54. Sec. III. In the interim from the time said vacancy may happen up to the time a successor may be elected and qualified, according to the foregoing provisions (in cases where it may be necessary,) the Justices of the Inferior Court of the County where said vacancy may happen is are hereby authorized to attend at the Court house of said County, and appoint some fit and proper person to discharge the duties of said office, until such vacancy may be filled according to the foregoing provisions, who shall be compelled to give bond and security and take the usual oath.*

Sec. IV. All laws and parts of laws militating against this Act are hereby repealed.

An Act to make Constables elective by the people; and the mode of taking their Bonds; and to point out their duty in certain cases.—


55. An election shall be held at the place of holding Justices' Courts in each Captain's district, on the first Saturday in January of each and every year, by persons entitled to vote for members of the General Assembly, for at least one, and not more than two Constables; which election shall be superintended by at least one of the Justices of the Peace and two freeholders; who shall hold his or their appointments until the first Saturday in January next thereafter, and until his or their successor is elected and qualified.

56. Sec. II. Before any Constable shall enter on the duty of his appointment, he shall take the usual oath, and enter into the usual bond, to be approved of by the Justice or Justices of the Peace of their respective districts.†

57. Sec. III. When an election should fail to be held at the time aforesaid, or a vacancy should happen, it shall be the duty of the Justice or Justices aforesaid to advertise an election in three of the most public places in their district, giving at least ten days' notice of the time and place, which shall be conducted in the same manner as aforesaid; and who shall hold his, or their appointment until the first Saturday in January next thereafter, and until his or their successors is elected and qualified.‡

Sec. IV. [See Justices of the Peace, &c. sec. 40.]

Sec. V. [Repealing clause.]

* This being a re-enactment of the Act of 1819, the former is omitted.
† See Act of 1834, sec. 60, as to certain bonds. See also Acts of 1816 and 1818, sec. 22, 26 of this title.
‡ See sec. 61.
An Act to change the election of Tax Collectors in the several Counties of this State, so far as to provide for said officers to be elected, and qualified to collect the taxes due for the year preceding their appointment.—Approved Dec. 2d, 1830. Pam. 113. [Repealed.]

An Act to amend an Act entitled an Act to make Constables elective by the people, and the mode of taking their bonds, and to point out their duty in certain cases.—Approved Dec. 20, 1834. Pam. 100.

58. From and after the passage of this Act, it shall and may be lawful for the Justices of the Peace in the several militia districts in this State, or either of them in the absence of the others, to appoint Constables for special purposes or to meet sudden emergencies, in cases where the Constable elected by virtue of the Act aforesaid shall be absent from the district for which he was elected, or shall, from providential causes, be disabled or prevented from discharging the duties of his office.

59. Sec. II. Nothing in this Act shall be so construed as to authorize Justices to appoint or deputize Constables in any case or cases whatever except those before specified.*

Sec. III. All laws or parts of laws militating against this Act are hereby repealed.

An Act to make valid Constables’ bonds in certain cases.—Approved Dec. 22, 1834. Pam. 225.

Whereas, many Constables’ bonds have been made payable to the Governor and his successors in office, instead of having been made payable to the Justices of the Inferior Court, in pursuance of the law passed 22d December, 1829; for remedy whereof—

60. Be it enacted, &c. That any bond or bonds which may have heretofore been given by any Constable or Constables of this State under the law above referred to, and made payable to the Governor, shall be and are hereby considered and taken as good and valid as if the same had been taken and made payable to the Justices of the Inferior Court, in compliance with the law aforesaid.

Sec. II. All laws and parts of laws militating against this Act are hereby repealed.

An Act to authorize Justices of the Peace in this State to appoint Constables in certain cases therein named.—Assented to Dec. 28, 1838. Pam. 71.

61. Sec. I. Be it enacted, That whenever any vacancy in the office of Constable shall occur in any militia district in this State, *See Act of 1838, sec. 61.
by death, removal, or otherwise, it shall and may be lawful for the Justices of the Peace of the district where such vacancy may occur, to appoint some fit and proper person to act as Constable for such district till a successor may be elected and qualified, as is now required by law.

62. Sec. II. When the Constable of any district may be unable to perform the duties of his office, from sickness or other disability, or on account of the amount of business being so great that it cannot be done in due time by the Constable of the district, the Justices of said district may appoint some suitable person to act as Constable for such district during such disability.

63. Sec. III. All persons appointed to act as Constables by virtue of this Act, shall give bond and security and be sworn for the faithful performance of their duties, as Constables are now required by law to do.

Sec. IV. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

An Act to authorize and empower County Surveyors to administer oaths in certain cases.—Assented to Dec. 29, 1838. Pam. 81.

64. Sec. I. Be it enacted, That from and after the passage of this Act, County Surveyors, when called on to admeasure and lay off dower, or divide lands held in common or joint tenancy, shall be, and they are hereby authorized and empowered to administer the oaths prescribed by law in such cases.

Sec. II. All laws militating against this Act be, and the same are hereby repealed.

An Act amendatory to and explanatory of the several Acts now of force in this State, in relation to the creation of County Treasurers, &c.—Assented to Dec. 31, 1838. Pam. 82.

 Whereas, the existing laws now of force in this State, creating County Treasurers, defining their respective duties and liabilities, are variously construed, some Inferior Courts recognising them as imperative to appoint another beside the Clerk of the Inferior Court for their Treasurer, while other Courts regard it as permissive only, and placed entirely within the discretion of the Courts, to do the one or the other; and whereas, under the latter construction no law provides for taking any bond or recognizance on the part of the Clerk, where he shall be held and deemed the legitimate County Treasurer as aforesaid, for the faithful execution of his trust as County Treasurer, whereby the whole finances of a County are placed entirely in the hands of said County Treasurer, without proper guaranties of fidelity:

65. Sec. I. Be it enacted, That whenever it shall so happen that the Justices of any Inferior Court or Courts, of any County or Counties of this State, or a majority of them, shall decide that they
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Election of C. C. O.—Judges may appoint Sheriff and Clerk

are not inhibited from retaining their Clerk as County Treasurer; then and in that case they shall nevertheless proceed to take proper bond and security of said Clerk, in like manner as is pointed out for County Treasurers generally.

66. Sec. II. The said Clerk, acting as County Treasurer, shall be required to pass all receipts for moneys received by him, and in all respects conform to all the duties pointed out for other County Treasurers.

Sec. III. All laws militating against this Act be, and the same are hereby repealed.

An Act to authorize the Justices of the Inferior Courts for the several Counties of this State to elect the Clerk of the Court of Ordinary.—Assented to Dec. 21, 1839. Pam. 41.

Whereas, it frequently occurs that the Justices of the Inferior Courts in the several Counties of this State fail to elect a Clerk for the Court of Ordinary on the first Monday in January, as required to do so by law, and for remedy whereof:

C. C. O. may be elected at any time.

67. Sec. I. Be it enacted, That in future, where the Justices of the Inferior Court as aforesaid, shall fail to elect a Clerk as aforesaid, that it shall and may be lawful for the said Justices, or a majority of them, to proceed at any time thereafter, and previous to the next regular time of said election, to elect a Clerk as aforesaid.1

68. Sec. II. Any person so elected shall, before he enters upon the duties as Clerk aforesaid, enter into bond with good and sufficient security or securities unto his Excellency the Governor for the time being, and shall be held liable in the same way as if he had been elected at the time regular by law, and shall continue in office no longer than the next regular time of electing said Clerk; any law to the contrary notwithstanding.

Sec. III. [See "Judiciary," sec. 74.]

Sec. IV. [Repealing clause.]

An Act to enlarge the powers of the Judges of the Superior Courts of this State, and for other purposes.—Assented to Dec. 3, 1842. Pam. 163.

Judge may appoint a Sheriff and Clerk temporarily.

69. Sec. I. Be it enacted, 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 the said Courts.

70. Sec. II. 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.

An Act to alter and amend the several Acts now in force in relation to the taking of Sheriffs' Bonds.—Approved Dec. 26, 1845.

Pam. 48.

71. Sec. I. From and after the passage of this Act, it shall be the duty of the Judges of the Superior Courts of this State, at the first sitting of the Superior Court, in any County in this State, after a Sheriff shall have been elected and qualified for such County, to examine the official bond of such Sheriff, and if the bond has been taken in conformity to the law, to cause the bond to be entered on the minutes of the Superior Court; and in case the bond has not been taken in conformity to the law, it shall be the duty of the Sheriff to give another bond in conformity to the law, which bond the Judge is hereby authorized and empowered to take, and when so taken, shall be entered on the minutes of the Superior Court. *

An Act to alter and amend an Act entitled an Act to alter and amend so much of the fourth section of an Act approved December 23, 1789, as relates to the amount of County Surveyors' Bonds, assented to Dec. 26, 1842.—Approved Dec. 25, 1847. Pam. 80.

72. Sec. I. From and after the passage of this Act, that all County Surveyors hereafter elected in the several Counties of this State, shall give bond and security in the sum of one thousand dollars, instead of three thousand dollars, as is now required by said amended Act. +

Sec. II. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

An Act requiring Clerks of the Inferior Courts of the several Counties of this State to record Constables' Bonds, and declaring certified copies thereof testimony in certain cases. †—Approved Dec. 27, 1847. Pam. 62.

73. Sec. I. From and after the passage of this Act, it shall be the duty of the Clerks of the Inferior Courts of the several Counties of this State, to record in a book to be kept for that purpose, all Constables' bonds that may hereafter be returned into their and each of their respective offices by the Magistrates before whom said bonds are executed, within twenty days after the same are so returned.

74. Sec. II. In all causes which may hereafter be instituted in

*As to Constables' Bonds, sec. 73; Administrators' and Guardians' Bonds, see "Executors," &c., sec. 120 and note.
‡See next Act as to certificate thereof.
§For Act requiring guardians' and administrators' bonds to be recorded, see "Executors, Administrators," &c., sec. 120 and note. As to Sheriffs' bonds, see sec. 71, this title.
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 Constable in 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 [where] such bond is of file or recorded, which copy shall be sufficient testimony in the cause, unless denied on oath.

Sec. III. [Repealing clause.]

An Act relative to Constables' Bonds, and to regulate the proceedings thereon.—Approved Feb. 11, 1850. Pam. 63.

75. Sec. I. Be it enacted, That from and after the passage of this Act, that all Constables hereafter to be elected in this State, shall, before he enters upon the discharge of his official duties, receive a certificate from the Clerk of the Inferior Court, that his bond has been filed in the Clerk's office as now required by law, and that the official acts of any Constable before filing of his bond and receiving a certificate according to the provisions of this section, shall be illegal and void.

Sec. II. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

An Act to prevent Sheriffs from holding the office of Constable.—Approved Feb. 21, 1850. Pam 369.

76. Sec. I. Be it enacted, That from and immediately after the passage of this Act, no City or County Sheriff shall be allowed to hold the office of Constable.

Sec. II. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

[Statutes omitted as repealed, obsolete, or superseded. Act of 1789, Watk. 389; of 1816, Vol. III. 152.]
An Act to be entitled an Act to provide for the indigent Deaf and Dumb citizens of this State; also to provide for the appointment of a Commissioner, to regulate his duties, affix his salary and to appropriate moneys therefor.—Assented to December 29, 1838. Pam. 92.

[Secs. I, II, III, and IV, with reference to commissioner to convey beneficiaries to Hartford, superseded.]

1. Sec. V. The sum of four thousand five hundred dollars shall be, and the same is hereby appropriated annually, out of any moneys in the treasury not otherwise appropriated, for the support of the deaf and dumb, as provided by this Act, which sums, or so much thereof as may be necessary, shall be paid to such commissioner on the warrant of the Governor, hereby, yearly until the Legislature shall otherwise direct; any law to the contrary in any wise notwithstanding.

An Act to alter and amend an Act to provide for the indigent Deaf and Dumb of this State, also to provide for the appointment of a commissioner, to regulate his duties, affix his salary, and appropriate moneys therefor, by changing the place of education, and for other purposes.—Approved Dec. 25, 1845. Pam. 25.

2. Sec. I. Be it enacted, That so much of the above recited Act as relates to the American Asylum at Hartford, Connecticut, as the place designated for the indigent deaf and dumb of this State, be repealed. Provided, that at the Cedar Valley Academy, in the County of Paulding, or some other Academy in this State, which may be approved by his Excellency the Governor, the same kind of education may be acquired, and on terms equally economical as those of the said American Asylum.

Sec. II. [Superseded.]

3. Sec. III. His Excellency the Governor, be authorized to remove such beneficiaries, as are now at the said American Asylum to Hartford, if the means of a proper education be supplied at the said Cedar Valley Academy, or elsewhere, on the same terms of econo-

*For Act declaring Deaf and Dumb persons idiots in law for certain purposes, see "Executors, Administrators, &c."
my to this State, and general usefulness of the appropriation made by said Act of eighteen hundred and thirty-eight.

4. Sec. IV. The provisions of this Act, and of the Act of which this is amendatory, shall be extended to all the indigent deaf, or dumb, or blind.*

5. Sec. V. All laws and parts of laws militating against this Act, be and the same are hereby repealed.

An Act to provide for the establishment and location of an Asylum for the Deaf and Dumb, to raise a Board of Commissioners for the same, and to define the rules under which persons may receive its benefits, and for other purposes.—Approved Dec. 16, 1847. Pam. 94.

6. Sec. I. As soon after the passage of this Act as may be convenient, his Excellency the Governor shall appoint five commissioners, of whom the present instructor of the deaf and dumb beneficiaries of this State shall be one, whose duty it shall be to select a site, to purchase a tract of ground suitable, of forty acres, more or less, and to cause forthwith to be erected thereon such buildings as may be requisite for an asylum and school-house for the deaf and dumb of this State, to be located at the most eligible point, not exceeding five miles distant from the place at which the deaf and dumb beneficiaries of Georgia are now instructed.

7. Sec. II. Said commissioners shall, at their first meeting, elect one of their own number as president, and one of their own number as secretary and treasurer. The president's signature shall be required to all the reports, drafts, orders, contracts, notes, and other official papers of the board. The secretary and treasurer shall keep an accurate record of all the proceedings of the board, an account of all its expenditures and a record of all its contracts of whatever kind, and no contract, bond, draft, order, report, obligation, or agreement of said board of commissioners, shall be valid unless it be first recorded by the secretary in a book kept for that purpose, signed by the president and countersigned by the said secretary.

The said secretary and treasurer shall give bond and security, payable to his Excellency the Governor, for the faithful performance of his duty, and shall receive for his services a salary not exceeding the sum of two hundred dollars annually.

8. Sec. III. Said board of commissioners shall perform all the duties now required by law of the commissioner for the deaf and dumb, whose office is hereby abolished, and shall cease from and after the day when his present year's commission shall expire.

9. Sec. IV. Said board of commissioners shall hold their office for one year only, but may be re-appointed by the Governor; and said board and their successors shall be known as the “Board of Commissioners for the Georgia Asylum for the Deaf and Dumb,” and in this name may have and hold all such lands, buildings and other effects as may be necessary for the uses and purposes of said

* See sec. 10.
asylum, and in this name may sue and be sued, and do and perform all other acts that may be necessary to carry out the provisions of this Act, not contrary to the laws of this State.

10. Sec. V. A majority of said board of commissioners shall reside in the County wherein said asylum is located; and upon the death, resignation, removal, or refusal to serve, of any one or more of said commissioners, the remaining commissioners shall give notice to the Governor of such vacancy within twenty days, and the vacancy shall be filled by the Governor within sixty days after such notice.

11. Sec. VI. Said commissioners shall give notice in one of the public gazettes of Savannah, Augusta, Macon, Athens, Columbus, and Cassville of the completion of said buildings, and announcing their readiness to receive beneficiaries and others into said asylum, and shall not receive more than one beneficiary from any one County in this State, until sixty days have expired from the publication of said notice.

12. Sec. VII. Said board of commissioners shall have power to purchase all such articles of furniture as may be required for the use of said deaf and dumb asylum and school; to appoint such officers as may be necessary; to select and employ such teachers as are requisite; and, with the consent of the Governor, to fix their salaries; to exercise a general supervision and control over the affairs of the school and asylum; and shall make a report of all their acts and doings to his Excellency the Governor at least twice a year, [that is] to say, on the first of June and first of November.*

13. Sec. VIII. Indigent deaf and dumb persons, resident any where within the State, shall be received into the asylum and school and maintained and educated gratuitously, so far as the funds of the institution will admit, after the provisions of the sixth section shall have been complied with. And when more persons shall apply for the benefits of the institution than can be received at any one time, the commissioners shall so apportion their number among the several Counties, according to their representative population, that every County may equally receive the benefits of the institution: Provided, always, That no person under ten, nor more than thirty years old shall be admitted, and no beneficiary allowed to remain more than four years. All others than the indigent deaf and dumb of this State may be received upon such terms as the commissioners may establish; and for the purpose of accommodating those who may apply for its benefits from other States, the buildings may, from time to time, be enlarged and improved, when the receipts of the asylum from other sources than the public treasury may justify it.

14. Sec. 9. The Governor be and is hereby authorized to draw his warrants upon the treasury for the unexpended balance of the standing appropriation for the education of the deaf and dumb for the year eighteen hundred and forty-seven, and for the whole amount of the said appropriation for the year eighteen hundred and forty-eight, in such sums as may be required by the board in carrying out

*Annually, sec. 15.
the provisions of this Act; *Provided, always,* That not more than one-half of the appropriation for eighteen hundred and forty-eight, with the unexpended balance of the appropriation for eighteen hundred and forty-seven, shall be expended in the purchase of land and in the erection and furnishing of the buildings.

An Act to complete and furnish the Georgia Asylum for the Deaf and Dumb, to appropriate a sum of money for the same, and for other purposes.—Approved Feb. 11, 1850. Pam. 18.

$4,000 appropriated.

15. Sec. I. *Be it enacted,* That the sum of four thousand dollars, together with the unexpended balance of the annual appropriation for the education of the indigent deaf and dumb for the year eighteen hundred and forty-nine, be, and the same is hereby appropriated for the completion and furnishing the asylum edifice, the erecting of the necessary out-buildings, work-shops, and such other improvements as the board of commissioners in their discretion may deem absolutely necessary; and that his Excellency the Governor be authorized to draw his warrants upon the Treasurer for said amount in favor of said board, for such sums and at such times as they may deem necessary and proper: *Provided, always,* That no greater sum shall be drawn than is absolutely required to carry out the provisions of this Act.

Reports to be annual.

16. Sec. II. The commissioners shall make a report of all their actings and doings to his Excellency the Governor annually on the first day of July, instead of semi-annually as now required by the seventh section of the Act for the establishment and location of said asylum.

Sec. III. [Repealing clause.]

[For an abstract of the action of the State previous to 1837, on the subject of the deaf and dumb, see Prince's Digest, 2d edition, page 884.]
DIVORCES.

Sec. 1. Label for divorce.
" 2. Defence.
" 4. Form of Verdict.
" 5. Non-resident Defendant.
" 6. Absolute or conditional.
" 7. Jury's duty.
" 8. Offender not to marry.
" 9. Husband's liability.
" 10. Issue not bastards.

Sec. 11. Schedule of property.
" 13. Conscientious scruples.
" 14. Grounds for total divorce.
" 15. Discretionary grounds.
" 17. Partial divorce.

An Act to carry into effect the ninth section of the third article of the Constitution.—Approved Dec. 1, 1802. Vol. II. 98.

Whereas, marriage being among the most solemn and important contracts in society, has been regulated in all civilized nations by positive systems: and whereas, circumstances may require a dissolution of contracts, founded on the most binding and sacred obligations which the human mind has been capable of devising, and such circumstances may combine to render necessary the dissolution of the contract of marriage, which dissolution ought not to be dependent on private will, but should require legislative interposition, inasmuch as the republic is deeply interested in the private happiness of its citizens: and whereas, the Constitution of this State declares,—[reciting the ninth section of the third article.] And doubts being entertained by the Judges of the Superior Courts of this State, with respect to their powers of deciding upon applications for divorce, before the General Assembly have legislated upon the said section of the third article of the Constitution; For the purpose of obviating said doubts, and of carrying into effect the said section of the Constitution, therefore,

Sec. I. Be it enacted, &c. [Directs that all divorces shall be a vinculo matrimonii. —Repealed, see sec. 6.]

1. Sec. II. The proceedings on divorce shall be by petition to the Court, which petition shall plainly and fully state the cause or causes of the application for such divorce, to which petition, the Clerk shall annex a citation signed by such Clerk, and bearing test in the name of the Judge having cognizance of the case, directed to the Sheriff, citing or requiring the defendant to appear at the Court to which the same is made returnable, thirty days before the sitting of the Court, by serving a copy of such petition and citation on the defendant, or by leaving a copy at his or her most notorious place of abode.

2. Sec. III. The following proceeding shall be observed by the

[1. Which required an Act of the Legislature to the completion of a divorce. By amendment of 1832-1833, two concurring verdicts of special Juries were made conclusive. Difficulties arising on the construction of the Constitution as amended, the amendment of 1847-1849 was passed. See Head vs. Head, 2 Kelly, 91. See also Constitution, as amended, in this work.]
Manner of defending it. The defendant, to wit: The defendant shall appear at the Court to which the petition and citation are made returnable, and on or before the last day of the Court, shall make his or her answer or defensive allegation in writing, signed by the party making the same, or his or her attorney, which may extenuate, deny, or contain as much matter, or as many circumstances, in his or her defence, as the said defendant may think necessary and proper therein.

Judgment by default. 3. Sec. IV. Where the said defendant shall fail to appear as aforesaid, the Court shall proceed to give judgment by default, which shall be inquired of as the law directs, and has hitherto been the custom and practice of Courts as in cases of default.

Form of the verdict. 4. Sec. V. The verdict of the Jury, which by the aforesaid section of the Constitution must in its nature be interlocutory, not definitive, shall be in the form and words following, to wit: "We find that sufficient proofs have been referred to our consideration to authorize a total divorce, that is to say, a divorce a vinculo matrimonii upon legal principles between the parties in this case;" * a certified copy of which verdict, signed by the Clerk of the Court at which the said verdict shall have been obtained, together with the records appertaining to the same, shall be and is hereby considered as a full compliance with the aforesaid section of the third article of the Constitution.

5. Sec. VI. When any person shall be out of the limits of this State, that have complaint alleged against them by virtue of this Act, the Judge presiding may make a rule of Court to compel their attendance, or proceed to trial in case of default.

*But see secs. 6 and 7.
†Grounds for total divorce—see Act of 1850, sec. 14.

(1.) Prior to the change of the Constitution in 1847-9, a total divorce could be granted, only for causes authorized by Common Law. 2 Kelly, 191.

An Act to amend the foregoing.—Approved Dec. 5, 1806. Vol. II. 312.
8. Sec. III. In all cases where the verdict shall be for an absolute divorce, the party whose improper or criminal conduct shall authorize such divorce, shall not be permitted to marry again during the life of the other party, and in case of such second marriage, the party so offending shall be subject to the pains and penalties enacted against bigamy. Provided always, that where the marriage is declared void for such causes existing before such intermarriage as are recognized by the Ecclesiastical Courts, the said parties may marry again, any thing herein contained to the contrary notwithstanding.

Sec. IV. and V. [Superseded by amendments to the Constitution.]

9. Sec. VI. In all cases where provision is made for the separate maintenance of the wife, according to the provisions of this Act, the husband shall not be subject to any contract made thereafter by such wife, but in all and every such case, the wife shall be subject to the payment of her own debts, out of her separate maintenance, during the time that such separation and separate maintenance shall continue.

10. Sec. VII. In all cases of divorce, the issue of such marriage shall not be bastardized, but shall be capable of taking by descent or distribution from either of their said parents.

11. Sec. VIII. In all cases of application for a divorce, the party applying shall render a schedule on oath, of the property owned or possessed by said parties at the time of such application, or, if the parties have separated, at the time of such separation, which shall be filed of record by the Clerk of the Superior Court, and after all just debts shall be paid, shall be subject to a division or equal distribution between the children of such parties, except the Jury before whom the same may be tried, shall think proper to allow either party a part thereof.

Sec. IX. [Repeals so much of the said Act as is repugnant to this.]

An Act to prescribe the oath of the special Jury in cases of Divorce.—Approved December 13, 1810. Vol. II. 630.

Whereas, some doubts have been entertained in the Superior Courts of this State with regard to the proper oath to be administered to the special Jury in cases of divorce,

12. Be it enacted, &c. That the oath to be administered to the special Jury in all cases of divorce, shall be in the words following, viz: “You shall well and truly try the cause depending between A B, plaintiff, and C D, defendant, 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 knowledge, so help you God.”

An Act to regulate the trial of Divorce cases.—Assented to Dec. 522, 1840. Pam. 55.

13. Sec. I. Be it enacted, That from and after the passing of
this bill, on trial of any divorce case, it shall be the duty of the Court, before striking off the Jury by the parties, to inquire of the panel whether any of such panel are under conscientious scruples in such case, and thereupon to discharge from the consideration of such case all who shall, under oath, swear that he or they have scruples of conscience in granting a divorce; and if the panel shall thereupon be reduced to a number less than eighteen, the Court shall forthwith fill up the panel with unexceptionable talesmen to the number of eighteen, to try such case, and from such panel the Jury for the trial of the cause shall be made.

Sec. II. All laws and parts of laws militating against this Act, be, and the same are hereby repealed.

An Act in relation to Divorces.—Approved Feb. 22, 1850. Pam. 151.

14. Sec. I. Be it enacted, That from and after the passage of this Act, the following shall be the grounds or legal principles upon which divorces from the bonds of matrimony shall be granted, to wit:

1stly. Intermarriage by persons within the levitical degrees of consanguinity or affinity.

2ndly. Mental incapacity at the time of marriage.

3dly. Impotency at the time of marriage.

4thly. Force, menaces, or duress in obtaining the marriage.

5thly. Pregnancy of the wife at the time of marriage, without the knowledge of the husband.

6thly. Adultery in either of the parties after the marriage.

7thly. Wilful and continued desertion by either party for the term of three years.

8thly. The conviction of either party of an offence involving moral turpitude, and under which he or she is sentenced to imprisonment in the Penitentiary for the term of two years or longer.

15. Sec. II. In case of cruel treatment on the part of one toward the other of the parties, or of habitual intoxication, the Jury may, according to the circumstances of such case, determine whether the divorce shall be from the bonds of matrimony or from bed and board.

16. Sec. III. If the adultery, or desertion, or treatment, or intoxication complained of, shall have been occasioned by the collusion of the parties, and done with intention of causing a divorce, or if the party complaining was consenting thereto, or if both parties have been guilty of like conduct, then no divorce shall be granted.

17. Sec. IV. All other grounds than those stated in the first and second sections of this Act shall only be causes for divorce from bed and board.

18. Sec. V. All laws now of force in relation to divorces and the form of proceedings necessary to obtain them, that are not inconsistent with this Act, be and the same are continued in full force.
An Act for the relief of certain citizens of this State from any and all disabilities, pains and penalties to which they may now be subjected by law.—Approved Dec. 20, 1849. Pam. 282.

Whereas, the Supreme Court of this State has decided that final divorces cannot be obtained, and are not authorized by law for any cause arising subsequent to the marriage; and whereas, there are many citizens, male and female, who have been divorced either by the judgment of the Superior Courts of this, or some other State; and whereas, there are those who now reside in this State, who have been divorced by the Acts and Resolutions of the legislative authority of other of the American States; and whereas, doubts are entertained as to the validity and legality of said divorces so obtained; for remedy whereof:

19. Sec. I. Be it enacted, That where any person or persons having been divorced as aforesaid, shall have heretofore married, or shall hereafter contract in marriage, that the same shall be legal and valid, and that all and every such person shall be exempt from all and every, the pains and penalties now prescribed against the crime of bigamy, and all privileges and immunities secured to the party in the decree of divorce, shall be valid in this State: Provided, that this Act shall not extend to partial divorces, whether granted in the State of Georgia, or elsewhere.

Sec. II. All laws and parts of laws militating against this Act be and the same are hereby repealed.

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DOWER.*

Sec. 1. Election within twelve months.
" " 2. Issue and trial.
" " 3. Land in two Counties.
" " 4. Return and Issue.
" " 5. Notice to parties.
" " 7. Admeasurement of Dower.
" " 8. Limit on Application.

Sec. 9. Election.
" " 10. Dower in proceeds of sale.
" " 11. In two Tracts.
" " 12. Money in lieu.
" " 13. Notice to Representative.
" " 14. More tracts than one.
" " 15. Money in lieu.

An Act for the more effectually securing the probate of Wills, limiting the time for Executors to qualify and Widows to make their election.—Approved Dec. 10, 1807. Vol. II. 381.

Sec. I. and II. [See Executors, Administrators, &c. secs. 85, 86.]

*As to mode of relinquishing dower, see Conveyances, &c. sec. 15. Also for Act barring dower in lands conveyed by the husband during the coverture, sec. 29, or by Sheriff, sec. 59. Also as to dower in lands mortgaged by the husband, sec. 11.
1. Sec. IV. It shall be the duty of all widows, within one year after the death of their husbands,* to make their election† or portion out of the estate of the deceased; and any such widow so failing to make her election, shall be considered as having taken her dower or thirds, and shall for ever after be debarred from taking any other part or portion of the said estate.

An Act to authorize the Superior Courts of this State to appoint persons to assign and set off Dower and to prescribe the mode of proceeding therein.—Approved Dec. 7, 1824. Vol. IV. 214.

Sec. I. [Re-enacted, with amendments, in 1839, sec. 7.]

2. Sec. II. In case any person or persons who may be interested in said land, shall traverse or deny the right of the applicant to such dower (the grounds of which traverse or denial shall be plainly and distinctly set forth in writing,) the Court shall order an issue to be made up, and the same shall be tried by a special Jury at the same term, unless it should appear to the Court that the principles of justice should require a continuance, which may be allowed for one term, and no longer; and the verdict of the Jury shall be final and conclusive between the parties.

3. Sec. III. When any person is entitled to dower in lands and tenements situate in different Counties of this State, application shall be made in the manner and under the restrictions hereinbefore pointed out by the Superior Courts in each of such Counties, and the writs granted by said Courts shall only extend to the laying off and assigning dower in the lands and tenements situate within the County in which such application is made.

4. Sec. IV. The persons appointed for the purposes hereinbefore expressed, shall return their proceedings on such writs to the term of the Superior Court next ensuing the one at which they were granted, there to remain of record, and which shall be final and conclusive between all the parties concerned, unless some person interested shall show a good and probable matter in bar of the confirmation of such assignment, or that the applicant is not entitled to so much as hath been assigned; in which case the Court shall permit an issue to be made up and tried by a special Jury without delay, unless good and sufficient cause should be shown to the Court for a continuance, which may be granted for one term and no longer; and if the Jury shall find in favor of the return and assignment already made, the same shall stand confirmed, but if they should find against it, the Court shall forthwith award another writ directing a new assignment, which shall be executed and returned as before directed, and which shall be final and conclusive to all the parties; and in all cases where

*After the granting of letters; see sec. 9.
†See Act of Dec. 12, 1804, Executors Administrators, &c. sec. 25, as to the widow’s election and the effect of it.

[1.] If the widow dies within the 12 months, without electing, her administrator is barred of claiming any interest in the realty. 9 Ga. Rep.
the assignment so made is confirmed by the Court, writs of possession, on the application of the person to whom dower is so assigned, shall be issued by the Clerk of the Superior Court from which the writ originally issued for such assignment, to give such person possession of the lands and tenements so assigned to them.

5. Sec. V. The persons so making the assignment shall in every case give to the parties in interest ten days' notice, if they reside within the State, and if they reside without the State two months' notice, in one of the public gazettes of this State, of the time and place of making said assignment.*

6. Sec. VI. The persons making such assignment shall be authorized to appoint and employ a Surveyor to assist in executing the writ to them directed, who, together with themselves, shall be entitled to such compensation for their services as the Court shall deem reasonable and just, and in case the person applying for said writ shall refuse or neglect to pay the sum awarded by the Court, execution shall be issued therefor as on a judgment.

Sec. VII. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

An Act to amend an Act to authorize the Superior Courts of this State to appoint persons to assign and set off Dower, and prescribe the mode of proceeding therein, and to define how Dower shall be laid off and assigned.—Assented to Dec. 21, 1839. Pam. 148.

7. Sec. I. Be it enacted, That from and after the passage of this Act, the Superior Courts of this State shall have power and authority upon the written application of any person entitled to dower in any lands and tenements in this State, to appoint five fit and discreet freeholders of the County in which the application is made, and cause to be issued by the Clerk of said Court, a writ for that purpose, to be devised and framed according to the nature of the case, directing said freeholders, or a majority of them, to enter upon such lands and tenements, and to admeasure, lay off and assign the one-third part of said lands, including the tenements, having regard to the shape and valuation of such lands: Provided, the said land should be without any corporate city, village or public place of business. And all lands within any corporate city, village or public place of business, it shall be the duty of said freeholders, or a majority of them, to admeasure, lay off, and assign one-third part of all the lands, tenements, to which the applicant is entitled, according to quantity or valuation, as they may think proper, just and equitable. The persons so appointed, shall take the following oath: "I do solemnly swear, or affirm, that I will duly and impartially execute the law to the best of my understanding: so help me God."† Provided, that the persons so apply-

*But see sec. 13.
†This oath may be administered by the County Surveyor; see "County Officers," sec. 64.

[1.] The widow is entitled to the possession of the tenements, before dower assigned. 3 Kelly, 207.
An Act to limit the time within which widows may apply for the assignment of Dower.—Assented to Dec. 21, 1839. Pam. 145.

8. Sec. I. Be it enacted, That in all cases hereafter where any husband shall die, application for the assignment of Dower shall be made by his widow, within seven years after his death, otherwise her right to dower shall be absolutely barred.¹

An Act to alter and amend an Act entitled an Act for the more effectually securing the Probate of Wills, limiting the time for Executors to qualify and Widows to make their election, and to change the mode of ascertaining and fixing, in certain cases, the Dower of Widows.—Assented to Dec. 9, 1841. Pam. 138.

9. Sec. I. Be it enacted, That from and after the passage of this Act, so much of the above recited Act as requires all widows within one year after the death of their husbands to make their election or portion out of the estate of the deceased be, and the same is hereby repealed; and in lieu thereof, that it shall be the duty of every widow, within one year after letters testamentary or of administration have been granted, and may have dower, or one-third of the proceeds of the sales of the land during life.

Principal to be untouchable.

Account.

An Act in relation to the assignment of Dower.—Approved Feb. 23, 1850. Pam. 152.

11. Sec. I. Be it enacted, That in all cases where commission-

*See Act of 1850, sec. 13, as to notice.  †But see Act of 1850, secs. 12, 14, 15.

[1.] This Act prospective. 7 Ga. 148.
Money in lieu of dower—Two tracts.

ers are appointed to assign dower to any widow, and there shall be two or more tracts of land of her deceased husband in the County, they shall be and are hereby authorized, if in their judgment it will promote the interest of all parties concerned, to assign and lay off to such widow her dower in one of said tracts instead of each, allowing to her such portion thereof as will be a just and fair equivalent for the dower in all said tracts.*

12. Sec. II. Such commissioners, whether there be one or more tracts of land, shall, if they deem it of advantage to all parties concerned, with the consent of the widow and the legal representative of her deceased husband, ascertain and assign to her a sum of money to be paid to her by such legal representative in lieu of dower in any or all of said tracts of land in the County, which sum shall be paid to her when the report of said commissioners is made the judgment of the Court.†

An Act to amend the several Acts in relation to the assignment of Dower.—Assented to Feb. 21, 1850. Pam. 153.

13. Sec. I. Be it enacted, That from and after the passage of this Act, that persons applying for dower, under the above recited section, it shall only be necessary for the applicant to give the representative of such estate twenty days' written notice of such intended application, instead of giving all the parties notice as now required by law.

14. Sec. II. In all cases where commissioners are appointed to assign dower to any widow, and there shall be two or more tracts of land of her deceased husband in the same County, they shall be and are hereby authorized, if in their judgment it will promote the interest of all parties concerned, to assign and lay off to such widow her dower in one of said tracts instead of each, allowing to her such portion thereof as will be a just and fair equivalent for her dower in all of said tracts, the widow having the right to select the tract from which her dower may be laid off.

15. Sec. III. Such commissioners, whether there be one or more tracts of land, shall, if they deem it of advantage to all parties concerned, with the consent of the widow and the legal representative of her deceased husband, ascertain and award to her a sum of money to be paid to her by such legal representative, as an equivalent for and in lieu of dower in any or all of said tracts of lands in the County, which sum shall be paid to her when the report of said commissioners is made the judgment of the Court.

Sec. IV. All laws and parts of laws militating against this Act, be and the same are hereby repealed.
ELECTIONS.*

Sec. 1. When and where held.
" 2. Fraudulent returns, &c. and general provisions.
" 3. Meeting of Legislature.
" 4. Elections by ballot.
" 5. Presidential elections.
" 6. Voters entitled.
" 7. Elections at precincts.
" 8. Carriers of returns.
" 10. Superintendents.
" 11. Their oath.
" 12. Duties at polls.
" 13. Consolidated returns.
" 14. Freeholder's signature.
" 15. Oath in doubtful cases.
" 17. Offenders.
" 18. Freeholders' compensation.
" 19. Hours for open polls.
" 22. Depositions.
" 23. Notice.
" 24. Reservation.
" 25. Voting out of County.

Sec. 27. Out of the County.
" 28. Freeholders—election by.
" 29. Electors Pres. and V. P.
" 30. In case of failure to elect.
" 31. Or of Electors to attend.
" 32. Senatorial districts.
" 33. Returns.
" 34. Congressional districts.
" 35. Who may vote.
" 36. Residents only eligible.
" 37. When and where held.
" 38. Governor's proclamation.
" 39. Vacancies.
" 40. Illegal voting.
" 41. Taxes and residence of members.
" 42. Time of closing.
" 43. List of voters.
" 44. Apportionment of Representatives.
" 45. Time of Pres. election.
" 46. Changes, Congressional districts.
" 47. Changes, Senatorial districts.
" 48. Time of Cong. election.
" 49. Extra sessions.
" 50. New precincts—how made.
" 51. Freeholders—election by.
" 52. Elections valid.

An Act to regulate the General Elections in this State, and to appoint the time of the meeting of the General Assembly.—Approved Feb. 11, 1799. Vol. I. 199.

1. SEC. I. All elections for members to represent this State in the General Assembly thereof, and for Representatives in Congress, shall be held at the Court house or place appointed for holding the Superior Courts in the respective Counties, and the electors thereat shall vote viva voce.† It shall be the duty of any three or more of the Magistrates of each County, not being candidates,‡ to preside at, and make returns of all elections for Senators and Representatives in the General Assembly, and Representatives in Congress; and the Sheriff of each County, or his deputy,§ is required to attend at such elections, for the purpose of enforcing the orders of the presiding Magistrates, and preserving good order. That the general elections shall be held annually,|| on the first Monday in October. [The rest of this section, respecting the oaths of voters and the hours of opening and closing the polls, re-enacted with alterations.]

2. SEC. II. If the superintending Magistrates or officers at such elections shall make a fraudulent return, or they or either of them,

*For mode of electing County officers, see that title.
†By ballot, sec. 4. In all the Counties, with few exceptions, precincts have been established at places other than the Court house.
‡One Magistrate and two freeholders, sec. 10. On neglect or refusal of Magistrates, two freeholders alone, sec. 28. But see Act of 1890, sec. 51.
§Or Constable, or other persons appointed, sec. 16.
||Biennially, under amended Constitution.
ELECTIONS—1799.

Fraudulent voting—Exemption from arrest—Congressional election.

while superintending at such election, or any candidate, shall influence or endeavor to influence or persuade any voter not to vote as he first designed or intended, or shall take any undue means to obtain a vote, he or they shall forfeit for the first offence, $100, to be recovered by information in any Court having jurisdiction thereof; and if a Justice, shall be forever disqualified from serving in the commission of the Peace; and if a candidate, shall be thereby incapacitated from serving in the post or place for which he may be elected.

That if any person or persons whatsoever, shall, on any day appointed for holding such elections, presume to violate the freedom of such election by any arrest, menace, or threat, or attempt to overawe, affright, or force any person qualified to vote, or offer any bribe to induce him to vote contrary to his inclination; or shall, after said election is over, menace or despitefully use, abuse, or insult any person, because he hath not voted as he or they might have wished him, every such person so offending, upon sufficient proof of such violence or abuse, menacing, or threatening, before any Justice of the Peace, shall be bound over to the Superior Court, himself in $100, and two securities in $50 each, to be of good behavior and abide the sentence of said Court, where, if the offender or offenders are convicted of such offence as aforesaid, then he or they shall respectively for each offence, forfeit a sum not exceeding $100, and be committed to jail without bail or mainprize, until the same be paid, which said fine so imposed shall be recovered by writ of fieri facias or ca. sa. issued and signed by the Clerk of said Court under and by virtue of the sentence of the same; and the Sheriff of the County is hereby required to levy such writ forthwith. Any person who shall arrest, menace, or bribe any voter on the day of election, or shall afterwards abuse a voter for his vote, shall be bound over to the Superior Court.

And on conviction, fined $100, and stand committed till paid.

Voters not to be arrested on pain of $500.

Members of Congress to be elected biennially.

See Penal Laws, secs. 240, 241, for further provisions against illegal voting, and buying or selling votes. See also sec. 40, this title.

†Election now by districts; see Act of 1843, making further provisions as to Congressional elections, sec. 36. The year changed by Act of 1850, sec. 48.
regularly during that time;* nor shall he hold any office of profit under this State or the United States, during the time for which he may be elected a Representative. That the names of the several candidates be kept on separate papers, and the number and the names of the voters shall be sealed up, together with an accurate state of the poll, under the hands of the presiding Magistrates,† and transmitted by express to his Excellency the Governor, within twenty days after closing the poll at such election, who is empowered to draw on the treasury for the payment of such express, not exceeding §2 per day. That the Governor or Commander-in-chief, for the time being, shall, within five days after the expiration of the said twenty days hereinbefore allowed for making returns, count up the votes from the several Counties, or such of them as may have made returns, for each person, and immediately thereafter issue his proclamation declaring the person having the highest number of votes and qualified as aforesaid, to be duly elected to represent this State in the House of Representatives of the United States, and to grant a certificate thereof, under the great seal of the State, to each of them:

[Proviso repealed by Act of 1843, sec. 41.] That where any two or more persons have an equal and the highest number of votes, [other than those duly elected in the general poll] then, and in that case, the Governor shall issue his proclamation directing a new election. That in case any person duly elected, being in this State and notified thereof in manner herein directed, shall not within twenty days, and if out of this State within forty days after such notification, signify his acceptance, or shall depart this life, the Governor or Commander-in-chief, shall order a new election to be held in like manner as hereinbefore pointed out. That all writs of elections to fill vacancies that may happen for members of the General Assembly of this State, or House of Representatives of the United States, shall be directed to the Justices of the Inferior Courts of the respective Counties, who are hereby required to give public notice thereof, and cause the same to be held in manner and form as hereinbefore pointed out agreeably to such writ. That the presiding Magistrates at any election for members of the General Assembly of this State, or Representatives in Congress, are hereby empowered and required to appoint three clerks to attend the said elections, whose duty it shall be to keep three rolls.‡

3. Sec. III. The General Assembly of this State shall, from and after the passing of this Act, meet on the first Monday in November annually.||

*And live within the district, sec. 36. Tax qualification repealed, sec. 41.
†By Res. Dec. 14, 1837, the Governor is requested to cause to be printed, copies of blank returns to be transmitted to the Clerk of the Superior Court, in each County, who is required to see that they are properly filled up. Pam. 276. As to transmitting returns, see sec. 8.
‡One to be filed in Clerk's office; see Act of 1845, sec. 43.
||Biennially, under amended Constitution.
ELECTIONS—1799-1824.

Vote by ballot—Elections of President and Vice President—Returns, how made and forwarded.

An Act supplementary to the foregoing.—Approved Dec. 4, 1799.

4. Sec. I. In future, all elections shall be by ballot. [The rest of this section, directing at what hours the polls shall be opened and closed, superseded by section 23. For the other sections of this Act, see County Officers, secs. 3 and 4.]

An Act to prescribe the mode of choosing the Electors of President and Vice-President of the United States, to which this State is entitled by the Constitution of the United States.—Approved Dec. 18, 1824. Vol. IV. 159.

5. On the first Monday in November, 1828, and on the first Monday in November of every fourth year thereafter, an election shall be held throughout this State, at the several places of holding elections for Senators and Representatives in the General Assembly, for the purpose of choosing Electors of President and Vice-President of the United States; which elections shall be opened and closed at the same hour and in the same manner, and shall be superintended and conducted by the same Magistrates and officers, as by law shall be authorized to superintend and conduct the general elections of this State.

6. Sec. II. At the said elections, every person entitled to vote for members of the General Assembly, or Representatives to Congress, may vote for a number of persons equal to the whole number of Representatives and Senators to which this State may be entitled in the Congress of the United States; and that it shall be the duty of the Justices or Magistrates presiding at the elections to be held under the authority and according to the provisions of this Act, to make immediate returns to the Governor of the State of the result of said elections; which returns shall clearly exhibit the number of persons voting for Electors, the number of votes given in, the names of persons voted for, and the number of votes which each may have received.

7. Sec. III. In Counties where by law the votes for members of the General Assembly shall be given at different places, it shall be the duty of the persons presiding at the different district elections to meet and consolidate the returns of the district elections, as by law required to be done at the general elections; which consolidated returns, exhibiting the result of the elections, as required by the second section of this Act, they shall immediately forward to the Governor of this State.

[Secs. IV, V and VI superseded by Act of 1843, secs. 29, 30, 31.]

*Tuesday after the first Monday, see Act of 1845, sec. 45.
†Erectors' pay $6 per diem and mileage: resolution of 1836, pam. 29 of Resolutions.
ELECTIONS—1828-'30.

Superintendents—Their duty and oath.

An Act for the payment of such person or persons as may be employed by the Superintendents of the Elections of Electors of President and Vice-President of the United States, of Governor of this State, and Members of Congress, in the several Counties of this State, to take the same to the Seat of Government.—Approved Dec. 22, 1828. Vol. IV. 178.

8. From and after the passage of this Act, it shall be the duty of the officers who may, superintend the election of Electors of President and Vice-President of the United States, of Governor of this State, and members of Congress in the several Counties of this State, to transmit by mail to his Excellency the Governor the result of said elections, as soon thereafter as practicable; and in those Counties where no mail passes within seven days after the elections are determined, to the seat of government, it shall be the duty of the aforesaid superintendents of said elections to transmit the same to his Excellency the Governor, by a special messenger, to be by them employed for that purpose.

9. Sec. II. Such person or persons as may be employed by the officers superintending the elections aforesaid, according to the provisions of this Act, shall receive for the service by them so rendered such sum as may be deemed by his Excellency the Governor just and proper, and that the same be paid out of the contingent fund.

An Act to prescribe the manner of holding elections at the several Election Districts in the several Counties of this State, and to punish those who may defeat or violate the election laws of force in this State.—Approved Dec. 23, 1830. Pam. 105.

Who shall superintend general elections in each district.

10. From and after the first day of June next, one Justice of the Inferior Court, or one Justice of the Peace and two freeholders, or two of the aforesaid Justices, and one freeholder,* shall superintend the elections, in each and every election district, which now is, or which hereafter may be established in any of the Counties of this State, for the election of Governor, members of Congress, members of the General Assembly, Electors of President and Vice-President, or County officers.

Oath of the superintendents.

11. Sec. II. The freeholders aforesaid shall not be competent to superintend the elections aforesaid, until they and each of them shall first have taken the following oath, viz: “I, A, B, do solemnly swear (or affirm) that I am a freeholder, resident in this County of —, that I will faithfully superintend this day’s election, and make a just and true return thereof, according to law, and to the best of my ability, so help me God.”

12. Sec. III. The superintendents, or a majority of them, of the district elections in the several Counties of this State shall, and they are hereby required, on the day of the elections by them held,

*Three freeholders, in certain cases; see Act of 1850, sec. 51.
in the respective districts, and at the places designated by law, for holding such elections, to receive and count out the votes by them taken in, keep a fair statement of the polls, and conduct the elections in all respects, according to the election law of this State now in force, 11th February, 1799, so far as said law is now in force.

13. Sec. IV. It shall be the duty of one, or more of the superintendents of the district elections in the several Counties of this State, to meet at the Court-house of their respective Counties, on the day after the election, and then and there, together with the superintendents of the election held at the Court-house, or a majority of them, and count, compare, and add together the returns to them produced by the superintendents of the district elections of the County, and return and certify to the Governor the result of the elections for that County, agreeably to the election law of force in this State, passed the 11th day of February, in the year 1799.*

14. Sec. V. All returns of district elections, made by freeholders in their several Counties, according to the provisions of this Act, shall be signed by them as such.

15. Sec. VI. When any doubt shall be suggested as to the legality of any vote offered at any election, held in any election district, in any of the Counties of this State, it shall be the duty of the superintendents of such election, before receiving such vote, to administer to the person offering it, together with the oath now prescribed by law, the following oath, viz: "I, A B, do solemnly swear (or affirm) that I have not this day voted at any election, held at any place in this State, for Governor, members of Congress, Electors of President and Vice-President, members of the Legislature, or County officers, so help me God."† And it shall be the duty of the superintendents of such elections, to return to the Clerk of the Inferior Court a list containing the names of all voters, who have taken the oath prescribed by this section of this Act, which list shall be filed in the office of said Clerk.

16. Sec. VII. The duties of Sheriff, as pointed out by law, at the district elections in this State, shall be performed by any Constable or any other person appointed by the superintendents, and that said election shall in all respects, except those herein recited, be conducted in the manner, and with the solemnities, and at the places prescribed by the laws now in force in this State, regulating general and County elections.

17. Sec. VIII. If any person shall vote at more than one place of holding elections in any County of this State, at any election for Governor, members of Congress, Electors of President and Vice-President, members of the Legislature, or County officers, ‡ or if any Justice as aforesaid, or freeholder presiding at any election in any of the districts of any County of this State, shall in manner fail to perform the duties herein required of him, or shall violate the trust herein confided to him; such person, Justice of the Peace or freeholder, shall be deemed guilty of a high misdemeanor, and upon

*See Act of 1845.
†See secs. 26 and 27 for other oaths.
‡See Penal Laws, secs. 210 and 211; Act of 1813, sec. 40, this title.

[The provisions of this Act superseded by the district system.]

An Act prescribing the manner of taking testimony in cases where any person intends contesting the seat of any person returned as elected a Senator or Representative of the Legislature of this State. Approved Dec. 24, 1831. Pam. 132.

21. Sec. I. When any person hereafter intends to contest the seat of any person returned as elected a member of the House of Representatives or of the Senate, the person intending to contest or object to the seat of the member or members of the House of Representatives or of a Senator who may have been returned as elected, shall give the adverse party five days' notice in writing with the name of the witness or witnesses, and the place where he intends to take the testimony, so that he may appear at the time and place, to put cross questions if he thinks proper; and the person returned as elected, shall, where he intends to take testimony, give the other party notice in like manner; Provided, nothing herein contained shall be so construed as to prevent either party from attending in person or by attorney.

*By Act of Dec. 4, 1799, from 7 a. m. to 6 p. m. Vol. I. 202; see Act of 1843, changing the time of closing to 5 p. m. sec. 42.
22. Sec. II. Where either party intends to take testimony, going to prove the legality or illegality of a vote given to either, or the constitutionality of his qualifications, the same shall be taken in manner aforesaid, and within twenty days after the election, and not after that time.

23. Sec. III. The person intending to contest the seat of any member of either branch of the General Assembly of this State, or object to the same, shall before he proceeds to take any testimony, give five days' notice to the member or members of the House of Representatives, or member of the Senate, in writing, of his intentions of contesting their seat or seats, and the testimony taken in manner aforesaid, shall be taken and acted upon in such manner as either branch of the Legislature may deem best calculated to insure justice to the parties.

24. Sec. IV. Nothing in this Act shall be so construed as to repeal or in anywise destroy the operation of the several laws now in force regulating the election of members to the General Assembly of this State.

An Act to authorize the citizens of this State to vote in certain cases, out of the Counties in which they reside.—Approved Dec. 21, 1833. Pam. 94.

25. In all elections hereafter to be held for Governor, or Electors of President and Vice-President of the United States, and upon all questions and subjects whereon the voice of the people of Georgia may be desired to be expressed, it shall and may be lawful for any citizen of this State who may be entitled to vote for such officers or upon such questions in the County of which he is a resident, to vote for or upon the same, in any County of this State: Provided, he shall not have voted elsewhere for such officer, or upon such question or subject.

An Act to alter and amend the Oath to be administered to Voters at Elections in this State.—Approved Dec. 22, 1833. Pam. 160.

26. Sec. I. That from and after the passage of this Act, the oath required by law to be administered to voters at elections for members of the Legislature, and other civil officers of this State, shall be as follows: I, ———, do solemnly swear or affirm (as the case may be) that I have attained to the age of twenty-one years; have paid all legal taxes which have been required of me, and which I have had an opportunity of paying according to law; that I am a citizen of the United States, and have usually resided in this County for the last six months, and have considered it my home or place of residence during that period, so help me God.

27. Sec. II. Where any person applies to vote for Governor, or members of Congress, or Electors of President and Vice-President of the United States, out of the County where he resides, and the pre-
siding Magistrates shall have doubts as to his right to vote, they shall administer to him the following oath, I, ______, do solemnly swear or affirm (as the case may be) that I have attained to the age of twenty-one years; am a citizen of the United States, and have usually resided in this State for the last six months, and have considered it my home or place of residence during that period; and have paid all legal taxes which have been required of me and which I have had an opportunity to pay agreeably to law, so help me God.

An Act to compensate the Superintendents of Precinct Elections in the County of Troup, and to change the place of holding the Precinct Election west of Chattahoochee from Goss' store to the west bank of the Chattahoochee river, at the Town of Vernon in said County.—Approved Dec. 21, 1835. Pam. 89.

SEC. I. II. and III. [Local, relating to the County of Troup.] 28. SEC. IV. Whenever the Justices of the Inferior Court, or the Justices of the Peace shall refuse or neglect to organize and carry on the election at the Court house of any County or at any precinct according to law, by the hour of ten in the morning of such election day, that then and in that case it shall and may be lawful for any two or more freeholders of the County to hold said election, and receive all lawful votes tendered, and the votes so received by the said freeholders shall be received and counted in making up the result of said election.*

An Act to amend an Act entitled an Act to prescribe the mode of choosing the Electors of President and Vice-President of the United States, to which this State is entitled by the Constitution of the United States, passed Dec. 18th, 1824.—Assented to Dec. 23, 1843. Pam. 53.

29. SEC. I. Be it enacted, That it shall be the duty of the Governor on the 18th day after said election shall have taken place, to make out a consolidated return of the number of persons voting for Electors, the names of the persons voted for, and the number of votes received by each, and immediately to notify those persons who may have received a number of votes amounting to a majority of the persons who shall have voted for Electors, of their election, and require their attendance at the time and place required by law, to vote for a President and Vice-President of the United States—said consolidated return, when so made out, shall be laid before the General Assembly, if in session.

30. SEC. II. In the event that a majority of the number of Electors to which this State may be entitled at any election for President and Vice President, shall not have received a majority of the votes polled as aforesaid, and there being no General Assembly in session,
it shall be the duty of the Governor to convene the General Assembly, which when assembled, shall proceed by joint ballot to the election of Electors for President and Vice President of the United States; but in the event that at least a majority of the whole number of Electors to which this State may be entitled, shall be elected in manner aforesaid, then and in that case, it shall be the duty of the Electors so elected, or a number of them amounting at least to a majority of the whole number to which this State may be entitled, to fill by ballot at the time and place appointed by law for the meeting of the Electors, any vacancy that may exist in their body, either by non-election of the full number, resignation, failure to attend, refusal to act, or from any other cause whatever.

31. Sec. III. In the event that at least a majority of the whole number of Electors to which the State may be entitled, at any election, shall be elected in manner aforesaid, and from any cause whatever a majority of said whole number shall not attend at the time and place appointed by law for casting their votes for President and Vice President of the United States to fill vacancies in their body, and cast their votes as aforesaid, or when a majority of said Electors shall not be elected, it shall be the duty of his Excellency the Governor forthwith to convene the General Assembly, who shall by joint ballot proceed to fill any vacancy or vacancies which may have occurred, in any manner whatever, in their body.

An Act to carry into effect the alterations and amendments made at this session of the General Assembly, in and to the third and seventh sections of the first Article of the Constitution of this State.—Assented to Dec. 23, 1843. Pam. 17.

Sec. I. [Repealed by Act of Dec. 27, 1845.]

32. Sec. II. The Senate shall consist of forty-seven members, to be elected, one from each of the Districts hereinafter mentioned, to wit:

The first, to consist of the County of Chatham.

The second, to be composed of the Counties of Bryan and Liberty.*

The third, to be composed of the Counties of McIntosh and Glynn.

The fourth, to be composed of the Counties of Wayne and Camden.

The fifth, to be composed of the Counties of Ware and Lowndes.

The sixth to be composed of the Counties of Appling and Montgomery.

The seventh, to be composed of the Counties of Tatnall and Bulloch.*

The eighth, to be composed of the Counties of Effingham and Screven.*

The ninth, to be composed of the Counties of Burke and Emanuel.*

* Changed by Act of 1850, sec. 47.
The tenth, to be composed of the Counties of Laurens and Wilkinson.

The eleventh, to be composed of the Counties of Telfair and Irwin.

The twelfth, to be composed of the Counties of Decatur and Thomas.

The thirteenth, to be composed of the Counties of Baker and Early.*

The fourteenth, to be composed of the Counties of Randolph and Stewart.*

The fifteenth, to be composed of the Counties of Lee and Sumter.*

The sixteenth, to be composed of the Counties of Muscogee and Harris.*

The seventeenth, to be composed of the Counties of Houston and Macon.*

The eighteenth, to be composed of the Counties of Talbot and Marion.*

The nineteenth, to be composed of the Counties of Pulaski and Dooly.*

The twentieth, to be composed of the Counties of Twiggs and Bibb.*

The twenty-first, to be composed of the Counties of Washington and Jefferson.*

The twenty-second, to be composed of the Counties of Richmond and Columbia.

The twenty-third, to be composed of the Counties of Warren and Talliaferro.

The twenty-fourth, to be composed of the Counties of Hancock and Baldwin.

The twenty-fifth, to be composed of the Counties of Putnam and Jones.*

The twenty-sixth, to be composed of the Counties of Monroe and Pike.*

The twenty-seventh, to be composed of the Counties of Crawford and Upson.

The twenty-eighth, to be composed of the Counties of Meriwether and Coweta.*

The twenty-ninth, to be composed of the Counties of Troup and Heard.*

The thirtieth, to be composed of the Counties of Carroll and Campbell.*

The thirty-first, to be composed of the Counties of Fayette and Henry.*

The thirty-second, to be composed of the Counties of Butts and Jasper.*

The thirty-third, to be composed of the Counties of Newton and Walton.*

The thirty-fourth, to be composed of the Counties of Morgan and Greene.

* Changed by Act of 1850, sec. 47.
ELECTIONS—1843.

Senatorial Districts—Congressional Districts.

The thirty-fifth, to be composed of the Counties of Wilkes and Lincoln.
The thirty-sixth, to be composed of the Counties of Elbert and Franklin.*
The thirty-seventh to be composed of the Counties of Oglethorpe and Madison.*
The thirty-eighth, to be composed of the Counties of Clarke and Jackson.*
The thirty-ninth, to be composed of the Counties of Gwinnett and DeKalb.*
The fortieth, to be composed of the Counties of Paulding and Cass.
The forty-first, to be composed of the Counties of Cobb and Cherokee.
The forty-second, to be composed of the Counties of Forsyth and Hall.*
The forty-third, to be composed of the Counties of Habersham and Rabun.
The forty-fourth to be composed of the Counties of Lumpkin and Union.
The forty-fifth, to be composed of the Counties of Gilmer and Murray.
The forty-sixth, to be composed of the Counties of Walker and Dade.
The forty-seventh, to be composed of the Counties of Floyd and Chattooga.

33. Sec. III. The managers of elections in the several Counties in this State, shall be required to meet at their several Court houses, as now prescribed by law, and count up the votes polled for Senator at the several election districts in their respective Counties, and transmit a return of the same to the Governor, who shall examine said returns, and the person having the highest number of votes, shall be declared Senator in the manner above pointed out, and the Governor shall give notice of the same by proclamation.

Sec. IV. All laws and parts of laws mitigating against this Act, be and the same are hereby repealed.

An Act to lay off and divide the State into eight Congressional districts; and to point out the mode of electing members to Congress in each district; and to provide against illegal voting.—Assented to Dec. 23, 1843. Pam. 54.

34. Sec. I. Be it enacted, That from and after the passage of this Act, the State of Georgia shall be laid off into eight Congressional districts, in the following manner, to wit:

Sec. II. That the Counties of Camden, Glynn, Wayne, McIntosh, Liberty, Bryan, Chatham, Effingham, Bulloch, Montgomery,

* Changed by Act of 1850, sec. 47.
ELECTIONS—1843.

Congressional Districts.

Butts, Hancock, Union, proclama—
 Residents
 Residents
 Eiffhth.

That the Counties of Houston, Decatur, Early, Baker, Lee, Randolph, Stewart, Sumter, Dooly, Muscogee, Marion, Macon, Irwin and Pulaski, shall compose the first district.*

Second.

That the Counties of Harris, Talbot, Crawford, Twiggs, Upson, Monroe, Bibb, and Pike, shall compose the third district.†

Third.

That the Counties of Troup, Meriwether, Heard, Coweta, Fayette, Campbell, Carroll, Henry, and Newton, shall compose the fourth district.‡

Fourth.

That the Counties of Dade, Walker, Chattooga, Floyd, Cass, Paulding, Murray, Gilmer, Cherokee, Cobb, DeKalb, Gwinnett, and Forsyth, shall compose the fifth district.§

Fifth.

That the Counties of Union, Lumpkin, Habersham, Rabun, Franklin, Hall, Jackson, Madison, Elbert, Clarke, and Walton, shall compose the sixth district.¶

Sixth.

That the Counties of Morgan, Green, Taliaferro, Putnam, Jasper, Butts, Jones, Baldwin, Wilkinson, and Oglethorpe, shall compose the seventh district.‖

Seventh.

And that the Counties of Wilkes, Lincoln, Columbia, Richmond, Burke, Screven, Jefferson, Warren, Hancock, and Washington, shall compose the eighth district.***

Residents in the district to vote.

35. Sec. III. All persons residing in each of the congressional districts aforesaid, entitled under the laws of this State to vote for members to Congress, shall be entitled to vote for one member to represent the district in which he may reside, in the Congress of the United States, and no more.

Residents alone eligible.

36. Sec. IV. No person shall be eligible to represent any of the said congressional districts, who does not at the time of his election, reside within the said district; nor shall any person be entitled to vote for a member to Congress, in any district other than the one in which he resides.

Elections—how and where held.

37. Sec. V. All elections for a member to Congress shall be held at the time prescribed by existing laws;↑↑ for members to Congress, and shall be held at the places or election precincts in each County composing said districts as are or may hereafter be established by law for holding elections for members to the State Legislature, and conducted and returned in the same manner as is now prescribed by law for the election of members to Congress.

38. Sec. VI. The person having the highest or greatest number of votes in each of their respective districts, shall be declared by proclamation from the Governor, duly elected, and commissioned accordingly, under the provisions of the laws of this State, touching the election and qualification of members to Congress.

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*Scriven added; Laurens taken away, sec. 45.
†Butts, Jasper, Jones, and Wilkinson added; and Harris taken away, sec. 45.
‡Harris and DeKalb added; Newton taken away, sec. 46.
§Union and Lumpkin added; DeKalb taken away, sec. 46.
¶Newton added; Union, Elbert, and Lumpkin taken away, sec. 46.
‖Hancock, Washington, and Laurens added; Butts, Jasper, Jones, and Wilkinson taken away, sec. 46.
***Elbert added; Hancock, Washington, and Scriven taken away, sec. 46.
↑↑But see Act of 1850, sec. 48.
39. Sec. VII. When any vacancy may happen in any or either of said districts, by death, resignation, or otherwise, for a member to Congress, such vacancy shall be filled by the persons of the district entitled to a vote, agreeable to the provisions of the ninth section of this Act.

Sec. VIII. [Temporary.]

40. Sec. IX. Any person who shall vote for a member of Congress, under this Act, in any other district than the district in which he may reside at the time of voting, or may be legally entitled to vote, or shall vote more than once in his own district, at the same election, shall be guilty of a misdemeanor; and on conviction thereof, shall be punished by fine of not less than one hundred dollars, nor more than five hundred dollars, at the discretion of the Court.

41. Sec. X. So much of the Act approved on the 11th day of February, 1799, as provides in the second section thereof, that no certificate or commission shall issue to or for any such person so elected until satisfactory proof is produced that the tax of such person has been regularly paid, and that he has actually had the residence therein prescribed, be and it is hereby repealed.

Sec. XI. All laws and parts of laws militating against this Act, be and the same are hereby repealed.

An Act to change the time of closing the polls at the several election precincts, in the several Counties in this State.—Assented to Dec. 27, 1843. Pam. 51.

42. Sec. I. Be it enacted, That from and after the first day of February next, the time of closing the polls at the several election precincts in the several Counties in this State, be changed from six o'clock to the hour of five in the afternoon; any law to the contrary notwithstanding.

An Act to compel the superintendents of elections held for Governor, Members of Congress, Senators and Representatives in the State Legislature, to file in the office of the Clerk of the Superior Court, one list of the voters at said elections.—Approved Dec. 10, 1845. Pam. 26.

43. Sec. I. Be it enacted, That hereafter the superintendents of elections held for Governor, members of Congress, Senators and Representatives in the State Legislature, shall file in the office of the Clerk of the Superior Court of the County where such elections may be held, one list of all the voters who may have voted at said elections within the County, which said list shall be kept by said Clerk for public inspection.

Sec. II. All laws and parts of laws militating against this be and the same are hereby repealed.
ELECTIONS—1845-'50.

Apportionment of Representatives—Congressional Districts.

An Act to apportion the Representatives among the several Counties of this State, according to the seventh section of the first article of the Constitution.—Assented to Dec. 27, 1845. Pam. 16.

Apportionment of Representatives.

44. Be it enacted, That until the next apportionment of Representatives among the Counties of this State, the representation of the several Counties shall be as follows, to wit: The Counties of Bibb, Burke, Cass, Chatham, Cherokee, Clarke, Columbia, Cobb, Coweta, DeKalb, Elbert, Franklin, Greene, Gwinnett, Habersham, Harris, Henry, Houston, Jasper, Lumpkin, Meriwether, Monroe, Muscogee, Newton, Oglethorpe, Pike, Putnam, Randolph, Richmond, Stewart, Talbot, Troup, Upson, Walton, Warren, Washington, and Wilkes, being the thirty-seven counties having the greatest representative population, shall each have two Representatives; and the Counties of Appling, Baker, Baldwin, Bryan, Bulloch, Butts, Camden, Campbell, Carroll, Chattooga, Crawford, Dade, Decatur, Dooley, Early, Effingham, Emanuel, Fayette, Floyd, Forsyth, Gilmer, Gilpin, Hall, Hancock, Heard, Irwin, Jackson, Jefferson, Jones, Laurens, Lee, Liberty, Lincoln, Lowndes, Macon, Madison, Marion, McIntosh, Montgomery, Morgan, Murray, Paulding, Pulaski, Rabun, Screven, Sumter, Tallapulsa, Tattnall, Telfair, Thomas, Twiggs, Union, Walker, Ware, Wayne and Wilkinson, shall be entitled each to one Representative.

An Act to alter the time for the election of Electors of President and Vice President of the United States.—Approved Dec. 27, 1845. Pam. 45.

45. Be it enacted, That the election of Electors of President and Vice President of the United States, shall hereafter be held on the Tuesday next after the first Monday in November, of the year in which they are to be elected; and that all laws now of force in relation to said election, shall apply to that day instead of the day heretofore fixed by law.

An Act to alter and amend an Act entitled an Act to lay off and divide the State into eight Congressional Districts, and to point out the mode of electing members to Congress in each District, and to provide against illegal voting; assented to December 23, 1843. Approved Feb. 22, 1850. Pam. 115.

46. Sec. I. Be it enacted, That from and after the passage of this Act, the County of Screven shall be added to and compose a part of the first congressional district; that the Counties of Butts, Jasper, Jones, and Wilkinson, shall be added to and compose a part of the third congressional District; that the Counties of Harris and DeKalb, shall be added to and compose a part of the fourth congressional district; that the Counties of Union and Lumpkin, shall be added to and compose a part of the fifth congressional district; that the Coun-

Changes in Congressional districts.
ty of Newton, shall be added to and compose a part of the sixth congressional district, that the Counties of Hancock, Washington and Laurens, shall be added to and compose a part of the seventh congressional district, and that the County of Elbert, shall be added to and compose a part of the eighth congressional district.

Sec. II. All laws and parts of laws militating against this Act, be and the same are hereby repealed.

An Act to alter and amend an Act entitled an Act to carry into effect the alterations and amendments at this session of the General Assembly, (to wit, the session of 1843,) in and to the third and seventh sections of the first article of the Constitution of this State, assented to twenty-third December, 1843, so far as relates to the Senatorial Districts.—Approved Jan. 21, 1850. Pam. 367.

47. Sec. I. Be it enacted, That from and after the passage of this Act, that the second senatorial district of this State shall be composed of the Counties of Liberty and Tattnall, the seventh senatorial district shall be composed of the Counties of Bulloch and Screven, the eighth senatorial district shall be composed of the Counties of Effingham and Bryan, the ninth senatorial district shall be composed of the Counties of Burke and Jefferson, the thirteenth senatorial district shall be composed of the Counties of Early and Randolph, the fourteenth senatorial district shall be composed of the Counties of Stewart and Muscogee, the fifteenth senatorial district shall be composed of the Counties of Lee and Baker, the sixteenth senatorial district shall be composed of the Counties of Troup and Harris, the seventeenth senatorial district shall be composed of the Counties of Houston and Pulaski, the eighteenth senatorial district shall be composed of the Counties of Marion and Macon, the nineteenth senatorial district shall be composed of the Counties of Dooly and Sumter, the twentieth senatorial district shall be composed of the Counties of Twiggs and Jones, the twenty-first senatorial district shall be composed of the Counties of Washington and Emanuel, the twenty-fifth senatorial district shall be composed of the Counties of Putnam and Jasper, the twenty-sixth senatorial district shall be composed of the Counties of Monroe and Bibb, the twenty-eighth senatorial district shall be composed of the Counties of Meriwether and Talbot, the twenty-ninth senatorial district shall be composed of the Counties of Heard and Carroll, the thirtieth senatorial district shall be composed of the Counties of Campbell and Coweta, the thirty-first senatorial district shall be composed of the Counties of Fayette and DeKalb, the thirty-second senatorial district shall be composed of the Counties of Newton and Henry, the thirty-sixth senatorial district shall be composed of the Counties of Franklin and Madison, the thirty-seventh senatorial district shall be composed of the Counties of Oglethorpe and Elbert, the thirty-eighth senatorial district shall be composed of the Counties of Clarke and Walton, the thirty-ninth senatorial district shall be composed of the Counties of Gwin-
ELECTIONS—1850.

Congressional Election—Precincts established.

Forty-secd. nett and Forsyth, and the forty-second senatorial district shall be composed of the Counties of Hall and Jackson.

Sec. II. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

An Act to change the time of holding Elections for Members to represent the people of this State in the Congress of the United States.—Approved Feb. 6, 1850. Pam. 161.

48. Sec. I. Be it enacted, That from and after the passage of this Act, the election for members of the United States Congress shall be held on the first Monday in October, in the year eighteen hundred and fifty-one, and on the first Monday in October every two years thereafter, any law, usage or custom to the contrary notwithstanding.

49. Sec. II. In case of an extra session of the Congress of the United [States] before the first day of November in any year in which said election is to take place, as provided in the foregoing section, it shall be the duty of his Excellency the Governor to issue his proclamation, ordering an election for Representatives in Congress in time for such extra session, on such a day as he may deem advisable, and the election held on such day, shall be held, conducted and the proper returns made to the Governor, as if the same were held at the regular time fixed by law.

Sec. III. All laws or parts of laws militating against this Act be, and the same are hereby repealed.

An Act to abolish, change and establish new election precincts in the Counties hereinafter named, and to confer certain powers upon the Inferior Courts, and to authorize three freeholders to manage and superintend elections in certain cases.—Approved Feb. 11, 1850. Pam. 164.

[Secs. I to XVIII, local.]

50. Sec. XIX. The Inferior Courts of the several Counties in this State shall have power to establish election precincts in their respective Counties, not to exceed one in each militia district, and to change the same upon the recommendation of the Grand Jury.

51. Sec. XX. In each election precinct in this State, it shall be lawful for three freeholders to manage any election which may be held in such district, in case there is no Justice of the Inferior Court or Justice of the Peace present; and in any such case either of such freeholders shall be authorized to administer any oath which it is necessary to administer for the purposes of such election; and the said three freeholders shall certify said election, as in other cases, which shall be as valid as if it had been conducted by a Justice of the Inferior Court or Justice of the Peace and two freeholders.

52. Sec. XXI. At said election precincts there may be held elections for Governor, members to Congress, Electors of President and Vice-President of the United States, members to the State Legislature, and all County officers.
ESCHEATS—1801.

C. C. O. Collector—Bond—Oath.

[Statutes omitted as obsolete, repealed, or superseded. Provincial Act of 1761, Watk. 67; 1789, Ib. 387; 1790, Ib. 419; 1791, Ib. 454; 1796, Ib. 611; 1799, Vol. I. 397; 1801, Vol. II. 3; 1811, Vol. III. 267; 1813, Ib. 268; 1816, Ib. 268; 1817, Ib. 270.]

Resolutions.—In 1837, pam. 276, in consequence of the many illegal returns, the Governor was requested to have copies of blank returns printed and transmitted to the Clerks of the Superior Court in each County, who were required to assist the Magistrates in making up their returns.

ESCHEATS.*

Sec. 1. Escheator—Oath.

**2. Duty, pay, &c.
3. Claims—Trial.
4. Suits by Escheator.
5. Rights of Creditors, &c.
7. Estates of Aliens.
8. Notice to Creditors.
9. Payment by Escheators.
10. Repealing clause.
11. Devises to Aliens.

Sec. 12. Escheat sales.

13. Personality Escheating.
15. Oath on Inquest.
16. On trial of claim.
17. Form of proceeding.
19. Disposition of money.
20. To whom paid.


1. Sec. I. The Clerk of the Court of Ordinary in each County shall be, and he is hereby required to take upon himself, and execute the duties of Escheator, for the purposes, and after the manner hereinafter mentioned and prescribed; that is to say, every Clerk of the Court of Ordinary in each County, shall give bond, with good and sufficient securities, payable to, and taken by the Governor for the time being, for the use of the State, which shall be recorded in the Secretary's office of this State, in the penal sum of ten thousand dollars for himself and sureties jointly and severally, and conditioned for the faithful discharge of the duties of said office, and shall moreover take the following oath, to be administered by the Governor or any of the Judges of the Superior Court, at the time of taking said bond, to wit: "I, A B, do solemnly swear that I will faithfully execute the duties of Escheator, for the State of Georgia, and diligent inquiry make for all property which hath escheated, or shall escheat to the State, according to the true intent and meaning of the Act, in this case made and provided, so help me God."

*For various Acts conferring privileges on aliens, see title "Foreigners."

27
Duty of the Escheator.

2. Sec. 2. Where it shall appear that any person has died without will and without heirs,* leaving property behind; † that then and in such case it shall be the duty of the Escheator of the County in which such person shall have died, to make inquiry of all the estate, both real and personal, of which the deceased died seized and possessed, and to notify the same in writing to the Escheator of every other County in which the said deceased, at the time of his death may have held, or been possessed of any estate, either real or personal, and thereupon it shall be the duty of the Escheator of the County in which such person shall have died, and of every other Escheator so notified as aforesaid, to make a true and just statement of all the property so far as comes to his knowledge, which the said deceased may have been seized and possessed of in his County, and notify the same to the Judge of the Superior Court, at least two months previous to the meeting of said Court in such County, and the Judge presiding at such Court shall cause the Jury, (being first sworn)† to proceed and make a true inquest of all such supposed escheated property, both real and personal, which by the Escheator shall be submitted to their investigation, and a true verdict make thereon; whereupon the Judge of the Court aforesaid, shall certify the same under his hand and seal to the Escheator of said County, who is hereby ordered to record the same in a book to be by him kept for that purpose, and shall return the original into the office of the Clerk of the said Superior Court, to be there filed and kept as a record of the said Court; and further, on returning the inquest into the office of the Court aforesaid, the Clerk shall thereupon cause to be advertised in one of the public gazettes of this State, the first week in every month for six months, the particular description of property, both real§ and personal, so escheated, the name of the person last seized and possessed, and the supposed time of his or her death, together with the part of the world in which he or she was known or supposed to be born, and requiring his or her heirs, or others who may claim under him or her, to appear and make claim, and if no person shall appear and make right and title to the same within twelve months after the time prescribed for advertising the same, the Clerk of the said Court shall issue process to be signed by one of the Judges to the Escheator, pronouncing the said property, both real and personal, to be escheated to and vested in this State, and directing him forthwith to sell and convey the same, having given six weeks| notice of the time and place of sale, in one of the public gazettes of this State, and also in two or more public places of the County; and it shall be the duty of every such Escheator to return the proceeds of such sale, after deducting for his own use two and a half per cent. out of the money received and paid on account of sales, as a compensation for his services, and the necessary expenses thereunto attendant, into the Treas-

*Explain by Act of Dec. 13, 1816. As to illegitimates, see "Executors and Administrators;" &c. sec. 27.
†For oath of Jury, see sect. 15.
§See sect. 11.
||See sect. 14 as to perishable property of aliens.
sury of this State.* Provided, nevertheless, if any person or persons shall appear within twenty-one years in cases of escheated real estate, but within five, if escheated personal property, and establish his title to such real or personal property in the Superior Court, on an issue to be made up and tried, and the same being certified by the Judge presiding at the trial of such issue to his Excellency the Governor, he shall forthwith give such person or persons a draft on the Treasury for the amount paid therein, in manner foresaid.

3. Sec. III. Any person or persons without delay, shall be heard on an issue to be made up in the Superior Court,† on a petition setting forth his, her, or their right, and the said property, both real and personal, shall be committed to him, her, or them, if he, she, or they shall show good evidence of his, her, or their title, to hold until the right shall be found for the State or the claimant, such claimant finding sufficient security to prosecute his, her, or their suit with effect, and without delay, and to render to the State the yearly value of such property, if the right be found for the State: Provided, that if any suit for property supposed to be escheated, shall be prosecuted by any escheator, and the Jury before whom such trial shall be had, shall think there is no probable cause, the Court before whom the same shall be tried, shall award to the party aggrieved, his, her, or their reasonable and legal costs, to be paid out of any funds, arising under and by virtue of this Act.

4. Sec. IV. Any possession, grant, conveyance, or any other cause or title, shall not preclude or hinder the State from making inquest and sale after the manner hereinbefore prescribed of all such property, both real and personal, as has been heretofore escheated, (save that which may have been escheated prior to the 4th day of July, 1776,) by the death of the person last seized and possessed without will, and without heirs, any law or usage to the contrary notwithstanding; and further, wherever any property, real or personal, of any person dying without will and without heirs, shall be found in the hands of any executor or administrator, the escheator shall on behalf of the State, sue for and recover the same either at Law or in Equity, and of real estate, the same when recovered shall be sold by notice and advertisement, as hereinbefore directed, and if personal property, the amount of the same when recovered, shall be paid into the public Treasury of this State.

5. Sec. V. Nothing herein contained shall prejudice the rights of creditors, or other individuals having claims or legal titles, or who shall be under the disabilities of infancy, coverture, duress, lunacy, or being beyond the limits of the United States, until three years after such disabilities shall be removed.

6. Sec. VI. If any escheator shall fail to do the duty required of him by this Act, or any loss or damage shall accrue to this State by his misconduct or fraudulent practices, the offender shall be responsible for all such loss or damage: and the Superior Court of the County wherein the offender resides, shall have power and authority to order a prosecution in the name of the State, and the Jury shall try the

*See secs. 18, 19, 22, 23.
†For oath of Jury, see sec. 16.
ESCHEATS—1801-'5.

Misconduct of Escheator—Aliens—Notice to creditors.

fact, and assess the damages and costs, and upon conviction, such escheator shall be incapable for ever thereafter of holding any place of trust or profit within this State; and further, that no escheator shall directly or indirectly, either by himself or any person whatsoever, purchase or be concerned with any person or persons, in purchasing any escheated property, without being subject and liable to the payment of five thousand dollars, to be sued for and recovered in any Court of record, one-half for the benefit of the informer who shall sue for and recover the same, and the other half to the use of the State; and moreover, that every such offender on conviction, shall be forever disabled from holding any office of trust or profit under this State.


7. Sec. I. From and after the passing of this Act, it shall be the duty of the Court of Ordinary, when any alien, resident or non-resident, shall depart this life, intestate, and without heirs, in this State or the United States, to cause the estate and effects of such alien, without delay, to be safely collected, and a just and true inventory and appraisement thereof to be made; and after giving twenty days' notice, by advertisement in one of the public gazettes of this State, and at two or more public places in the County where such alien shall die, shall cause the said estate to be sold at public auction, and the proceeds of such sale to be paid into Court, to be applied and disposed of in manner hereinafter mentioned.†

8. Sec. II. After such sale as above mentioned shall have taken place, and the proceeds paid into Court, it shall be the duty of the said Court of Ordinary, and the said Court is hereby required to cause public notice to be given, by advertisement, for the creditors of such deceased to come forward, within twelve months after the publication of such notice, and prove their debts to the satisfaction of the said Court; and after the expiration of the said twelve months, the said Court shall proceed to examine and ascertain the total amount due such creditors, and shall pay and satisfy each of the said creditors in whole or in part, as the estate of the deceased will admit, and the surplus, if any, after such payment as aforesaid, shall be disposed of as is directed by the escheat law.

9. Sec. III. The several escheaters of this State, who have or may hereafter have or receive any moneys arising from the sales of such estates as aforesaid, shall, upon the requisition of the Court of Ordinary of the County, pay such moneys into the said Court, within twenty days after he shall be required so to do by the said Court; and in default thereof, shall forfeit and pay double the sum which such escheater shall have received, and have in his hands as aforesaid,

*This Act applies only to such escheated estates as belonged to aliens. The reason why there should be this distinction between such estates, and all other escheated property, as provided for in the Act of 1801, is not very apparent.—Priner.
†But see sec 14. As to the privileges and immunities of aliens, see title "Foreigners."
to be recovered by action of debt in any Court having jurisdiction thereof.*

10. Sec. IV. The Act "to regulate escheats," so far as the Repealing clause militates with this Act, be, and the same is hereby repealed.

An Act to explain and amend the escheat laws.—Approved Dec. 15, 1810. Vol. II. 665.

Whereas, the escheators in many Counties of this State are causing vexatious law-suits, by pointing out property not contemplated by the escheat law of 1801; to wit, the estate of citizens of this State, who bequeathed their estates to persons residing in foreign parts: for remedy whereof,

11. Sec. I. Be it enacted, &c. That in all cases where a citizen of this State, or of the United States, shall die, or may have died, possessed of or entitled to any real estate, and shall leave no heir who can inherit the same, because of his or her being alien;† that in such case the said real estate shall not be held or considered subject to escheat, but the executor or administrator of such deceased citizen shall and may proceed in the manner pointed out by law, to make sale of such real estate, and pay over the proceeds of such sale to the devisee or devisees named in the will of such deceased citizen, or to the legal representatives of such deceased citizen: provided always nevertheless, that nothing herein contained shall be so construed to affect cases where the escheator in any County shall have already proceeded to make a disposition of property under the escheat laws of this State, and the proceeds thereof shall actually have been paid into the Treasury of this State.

12. Sec. II. In all cases where a citizen has heretofore died, leaving real estate as before mentioned, and shall have made a disposition thereof by will, and the executor or executors of such deceased citizen have proceeded to make sale of such real estate for the benefit of the heirs of such deceased citizen, such sales shall be, so far as it regards the title of such deceased citizen, held and considered valid and legal, any law to the contrary notwithstanding.

13. Sec. III. No personal estate of any deceased person shall be considered subject or liable to escheat in this State, except in cases where such deceased person shall have made no disposition of the same by will, and shall have no legal representatives to inherit the same.‡

14. Sec. IV. Perishable articles of aliens shall be sold after giving twenty days' notice in two or more places in the County where such articles may be; the other property of such alien shall be disposed of agreeable to the escheat Act of 1801.

*But see secs. 18, 19, et seq.
†See further as to privileges and disabilities of aliens, title "Foreigners."
‡As to illegitimate children, see "Executors, Administrators," &c. sec. 27.
An Act prescribing the oaths to be taken by Juries in certain trials under the several Acts to regulate escheats, and to authorize the Judges of Superior Courts to adopt the necessary forms of process and other proceedings to carry the said Acts into effect.—Approved Dec 19, 1817. Vol. III. 277.

15. Sec. I. The oath to be taken by the Jury upon an inquest of office, touching escheated property, such as is described in the second section of an Act, entitled "An Act to regulate escheats in this State, and to appoint escheators," passed the 5th day of Dec. 1801, shall be as follows: "You shall true inquest make, touching the escheat of such property as may be given you in charge, and a true verdict give according to evidence: So help you God."

16. Sec. II. When any property returned by the escheator is claimed by any person or persons, pursuant to the third section of the above recited Act, and an issue is made up thereon, the oath to be administered to the Jury upon the trial of such issue shall be as follows: "You shall well and truly try this issue of escheat between the State of Georgia and ——, [here insert the name of the claimant or claimants,] and a true verdict give according to evidence: so help you God."

17. Sec. III. The Judges of the Superior Courts in the several Circuits of this State are hereby authorized and required to devise and adopt the several forms of process, and other proceedings which may be necessary and proper to carry into effect the above recited Act, and all the several Acts or parts of Acts amendatory or supplementary thereto.

An Act more effectually to provide for the collection of the funds arising from the sales of escheated property within this State, and to apply the same to literary purposes.—Approved December 21, 1819. Vol. III. 278.

Whereas, the provision heretofore made for the collection of the funds arising from the sale of escheated property, has been found inadequate and unproductive:

18. Sec. I. Be it enacted, &c. That from and immediately after the passing of this Act, it shall be the duty of the Attorney and Solicitors General, at the first term of the Superior Court in every year, in each and every County in this State, by rule or order of the said Superior Court, to require the escheators in the said Counties respectively, to pay into the hands of the said Attorney or Solicitors General, for the purposes herein mentioned, all such sum or sums of money as may be in the hands of the escheators under the several escheat laws of this State; and in case of a default or refusal by any such escheator, the Superior Courts aforesaid shall have power to punish such escheator in the same manner as if such escheator was a defaulting officer of such Court.*

*Made a part of County funds, secs. 22, 23.
Sec. II. [Superseded by next Act, sec. 19.]
Sec. III. [Superseded.]
Sec. IV. All laws and parts of laws militating against this Act to be, and the same are hereby repealed, except so far as relates to the County of Chatham, where the said funds shall be applied as heretofore.*

An Act to alter and amend the several escheat laws of this State, so far as relates to the disbursement of money arising from the sale of escheated property, in the several Counties of this State—Approved Dec. 29, 1836. Pam. 126.

19. Sec. I. From and immediately after the passage of this Act, all moneys arising from the sale of escheated property in the several Counties of this State, shall vest in, and become a part of the fund of said County respectively.

20. Sec. II. The Solicitor General and Attorney General of the several judicial circuits of this State, be authorized and required to collect all such moneys arising in the several Counties in their circuits, respectively, in the manner pointed out by an Act, passed December 21st, 1819, entitled an Act more effectually to provide for the collection of the funds arising from the sales of escheated property within this State, &c. whose duty it shall be to pay over the same when collected, to the Justices of the Inferior Court of the County wherein the property is escheated.

21. Sec. III. Nothing contained in this Act, shall be so construed as to take from the heirs of escheated property, any rights of heirship given them by the escheat laws of force in this State.

Sec. IV. [Repeals all conflicting laws.]
[Statutes omitted as obsolete, repealed or superseded. Act of 1792. Watk. 498. 1793, Ib. 534.]

*For further regulations as to Chatham County, see Acts of 1845, pam. 95 and 96.
ESTRAYS.

Sec. 1. Gelding stud horses.
Sec. 16. Delinquent takers up.
" 2. Illegal sales of estrays.
" 17. Delinquent officers.
" 3. Taking up.
" 18. Sale of neat cattle.
" 19. Fees.
" 5. Book of Justice.
" 20. Advertisement of horses, &c.
" 6. Clerks' duty.
" 7. Stray pen.
" 22. Clerks' fees.
" 8. Sale of horses, mules, &c.
" 23. Clerks' duty.
" 9. Of neat cattle, goats, &c.
" 24. Levies on estrays.
" 10. Claim in 2 years.
" 25. Claim.
" 11. Justices' fees.
" 26. Issue and trial.
" 12. Compensation of taker up.
" 27. Costs.
" 13. Payment by owner.
" 28. Taker up—claimant.
" 14. Clerks' fees.
" 29. Time of selling neat cattle, &c.
" 15. Account to Grand Jury.

An Act concerning Estrays, and for improving the breed of Horses.

And for the improvement of the breed of horses within this State, 1. Sec. XV. Be it enacted, &c. That if any stone-horse, above eighteen months old, shall be found running at large, it shall and may be lawful for any person to take up the same; and having taken him before the nearest Justice of the Peace in the County, by the permission of the said Justice, may geld the same, taking care that the operation is performed by a person usually doing such business in the neighborhood, for which the person so gelding shall receive one dollar, to be paid by the owner of the horse: Provided, nevertheless, that if any person shall take up and geld any such stone-horse, contrary to the true intent and meaning of this Act, or without fully pursuing the above direction, he shall, for every such offence, forfeit to the party injured double the value of such horse, which value shall be ascertained by two respectable freeholders, who were acquainted with such horse, who shall act upon oath, to be recovered in any Court having cognizance of the same.

[The rest of this Act repealed by the Act of 1801.]

An Act to revise and amend the foregoing.—Approved Feb. 15, 1799. Vol. I. 211.

2. Sec. III. If any person shall presume to sell or dispose of or apply to his or their own use any estray, every such person or persons so offending shall be subject to indictment for a misdemeanor, and on conviction thereof shall forfeit and pay to the Justices of the Inferior Court, for the use of the County in which such offence may be committed, double the value of such estray or estrays, so sold, applied, or converted to his, her, or their use.*

[The rest of this Act repealed by that of 1801, next in order.]

*See sec. 12, as to delinquent takers up. See also "Penal Laws," sec. 372.
An Act to amend and consolidate the several Estray Laws of this State.

3. Sec. I. It shall and may be lawful for any person upon his own freehold, or other person having charge of such freehold in the absence of the owner thereof, and not elsewhere, to take up all estrays, whether horse, mare, colt, filly, ass, ass, mule, neat cattle, sheep, goat, or hog, that may be found straying away from their owners; and every person taking up estrays as above, shall, within ten days, in case such estrays have been broke to service, take or drive it or them before a Justice of the Peace in the County, whose duty it shall be, and he is hereby required to take down in writing a particular description of the marks, natural and artificial, brands, stature, age and color of such estray or estrays; and immediately to issue his warrant to two or more freeholders of the vicinage commanding them, having been first duly sworn thereto, well and truly to appraise or ascertain the value of such estray, which appraisement or valuation and description as above, together with the name of the taker up and the place of his abode, the said Justice shall, within ten days thereafter, transmit to the Clerk of the Inferior Court of said County, taking special care that the person or persons taking up such estray do solemnly swear or affirm that he or they have not altered, or caused to be altered, the marks or brands of such estray, and to the best of his or their knowledge and belief such marks or brands have or have not (as the case may be) in anywise been altered, and that the owner to him or them is unknown.

4. Sec. II. In case any person shall take up any such estrayed neat cattle, sheep, goats, or hogs, he shall cause the same to be viewed by a freeholder in the County where the same shall happen, and that the taker up be compelled to advertise said estrays at least ten days, at the place of holding Justices' Courts in said district, prior to tolling; and shall immediately thereafter go with such freeholder before a Justice of the Peace for said County, and make oath before him that the same was taken up at his plantation or place of residence in the said County, and that the marks or brands of such estray have not by him, or to the best of his knowledge, been altered; and then the said Justice shall take from the taker up and freeholder, upon oath, a particular and exact description of the marks, brands, color, and age of all and every such neat cattle, sheep, goat, or hog, and such Justice shall, in manner above directed, issue his warrant for the appraisement of such estrays, which description and valuation shall by the said Justice, within ten days, be transmitted to the Clerk of the Inferior Court, by him to be disposed of as hereinafter directed.

5. Sec. III. It shall be the duty of every Justice of the Peace before whom any estray shall be carried as aforesaid, to enter a true copy of the certificate transmitted by him to the Clerk of the Court, in a book to be by him kept for that purpose.

6. Sec. IV. It shall be the duty of the Clerk of the Inferior Court in each County in this State, and he is hereby required to re-
ceive and enter in a book, by him to be provided and kept for that purpose, all such certificates of description of appraisement as to him shall be transmitted from the respective Justices in the County; and it shall also be the duty of the said Clerk of the Inferior Court to affix a copy of every such description and valuation to the Court-house of his County for two terms successively, after the same shall be transmitted to him.*

7. Sec. V. It shall be the duty of the said Clerks of the Inferior Courts in their respective Counties to cause an enclosure to be made at the Court-house, to be paid for out of the moneys arising from the sale of estrays, for the purpose of impounding estrayed horses, mares, colts, fillies, asses and mules, and that all estrays aforesaid, taken up as aforesaid, shall by the taker up be brought to the said enclosure and impounded from ten o'clock in the forenoon until three o'clock in the afternoon on the first day of every term for twelve months, both of the Superior and Inferior Courts; and the said Clerks shall see that these requisitions be complied with by the taker up. And every taker up of an estray as aforesaid shall, for every neglect to impound as aforesaid, be subject to a fine of five dollars, to be collected by execution under the hand and seal of the presiding Justice of the Inferior Court, and paid into the Clerk's office for the use of the County, unless sufficient cause to the contrary be shown to the said Court at the next term thereof.

8. Sec. VI. It shall be the duty of the taker up, and he is hereby required to bring to the Court-house in the County wherein he resides, and deliver to the Clerk of the Inferior Court of said County every estrayed horse, mare, colt, filly, ass, or mule on the first Sheriff's sale day that shall happen after the expiration of twelve months from the time of entering such estray as aforesaid with the Justice; and it shall be the duty of the Clerk to proceed to sell such estray or estrays as aforesaid, on the day aforesaid, between the usual hours, for ready money to the highest bidder; which money shall in the hands of the said Clerk be subject to the order of the Inferior Court, for County purposes, after defraying the charges or fees hereinafter directed. And every taker up who shall neglect or refuse to comply with these requisitions shall be liable for double the amount of the appraisement, to be collected by execution under the hand and seal of the presiding Justice of the Inferior Court; unless sufficient cause to the contrary be shown the Court at the next term thereafter; and the said forfeiture when collected shall be applied to the use of the County, after deducting the legal fees.†

9. Sec. VII. In case any person shall take up as aforesaid any neat cattle, sheep, goats, or hogs, and no person or persons shall appear and make satisfactory proof within three months‡ that the said estrays are his or their property, the Justice having given twenty days' notice by advertisement in two of the most public places in the Captain's district wherein he resides, shall proceed to sell the said

*See sec. 20, as to advertising certain estrays.
†See also sec. 16.
‡By Act of 1833, time extended to six months; by Act of 1842, reduced to four months, and by Act of 1845, sec. 29, three months.
estrays,* by his Constable, upon one of his Court days, between the usual hours, for ready money, to the highest bidder; and it shall be the duty of the Justices in the several Counties, and they are hereby required to pay to the Clerk of the Inferior Court in their respective Counties, at each term of said Court, all moneys in their hands that have arisen from the sales of estrays as aforesaid, deducting five per centum for commissions and such other charges as are allowed by law; and all moneys so paid shall be subject to the order of the Inferior Court for County purposes.

10. Sec. VIII. If any person or persons shall, within the term of two years from the time of such sale, prove to the satisfaction of the Court that the property so sold was his or their own, or that of his or their employers, (as the case may be,) in that case the Court shall, after deducting the fees and charges hereinafter described, pay the balance of the money arising from such sales to the claimant of such property.

11. Sec. IX. The Justice, for his services as above, shall receive Justice's fees, from the take-up, at the time such estray or estrays shall be brought before him, or description or valuation thereof presented to him as above, the sum of seventy-five cents for each horse, mare, colt, filly, ass, or mule, and the sum of six and one-fourth cents for each head of neat cattle, sheep, goats or hogs;‡

12. Sec. X. The take-up of such estrays shall, as a compensation for maintaining and keeping of the same, put them to immediate labor if capable of service, and if incapable or he should prefer it, receive from the owner, if claimed, or from the Court, if sold, a reasonable satisfaction, to be adjudged by the Clerk and a Justice of the Peace for the County, according to the circumstances of the case: Provided, nevertheless, that in case of putting such estray to labor, he shall be bound to produce such estray to the owner, if claimed, or to the Clerk, if sold, (casualties excepted,) in as good condition as when apprised.

13. Sec. XI. Upon the delivery of any such estray to the legal owner, or in the case of sale, upon the sale thereof, the take-up shall receive from the owner or Clerk, as the case may be, the sum of one dollar for each horse, mare, colt, filly, ass, mule, or ox, in addition to the sum by him paid to the Justice, and the sum of twelve and a half cents for each head of neat cattle, sheep, goats, or hogs, in addition to the sums above mentioned for the keeping and maintenance of the same;‡

14. Sec. XII. The Clerk of the said Court shall, for the receiving, entering, and publishing every certificate as above directed, receive the sum of fifty cents, to be paid by the owner upon claiming the property, or deducted out of the money arising from such property in case of sale, and the further sum of five per centum upon the balance of such money, as a compensation for selling, collecting, and paying;‡

*See sec. 14, and note thereto. †See "Counties," sec. 3.
‡See sec. 19.
15. Sec. XIII. It shall be the duty of the Clerk of said Court, to render to the said Inferior Court, at every term thereof, a true statement of all moneys arising from the sales of estrays, as aforesaid, accompanied with the proper vouchers, and exhibit a correct statement as aforesaid, to the Grand Jury of the County at every fall term of the Superior Court, and oftener if required.

16. Sec. XIV. Any person taking up any estray as aforesaid, and failing or neglecting to comply with, and fulfil the true intent and meaning of this Act, and being thereof duly convicted before the Inferior Court, shall for every such offence, forfeit and pay a sum equal to double the value of such estray, so neglected to be tolled and advertised as aforesaid, to be recovered by suit or action at law, the informer to be the plaintiff in the action; one half of the sum so recovered to the use of the informer, the other half to the use of the County.

17. Sec. XV. If any Justice or Clerk shall refuse or neglect to perform the duties required by this Act, each Justice or Clerk neglecting or refusing, shall for every such neglect or refusal forfeit the sum of twenty dollars, one moiety to be paid to the party informing, and the other moiety to the use of the County where such offence shall be committed, to be recovered by action of debt, in any Court having cognizance of the same, and shall moreover be liable to an action of damages to the party injured, and upon conviction pay double costs.

Sec. XVI. [Directing the Clerks of the Superior Courts to pay and deliver to the Clerks of the Inferior Courts the money and books then in their hands.—Temporary.]

Sec. XVII. [Repeals all laws on the subject, repugnant to this.]

An Act to amend the 7th and 11th sections of the foregoing Act.—Approved Dec. 7, 1803. Vol. II. 123.

18. Sec. I. From and after the passing of this Act, no neat cattle taken up as estrays, shall be sold under twelve months* from the time of being tolled; and it shall be the duty of the Clerks of the Inferior Courts, previous to the advertisement and sale of such estrays by the Justice before whom they may have been tolled, to advertise at the door of the Court house all such estrays, on the first day of every succeeding term of the Superior and Inferior Courts, which may happen in the County within the said term of twelve months.

19. Sec. II. The respective Clerks of the Inferior Courts shall be entitled to receive as full compensation for each estray so advertised, twenty-five cents; and the persons taking up such estrays, shall be allowed a reasonable compensation for their trouble, to be adjudged by the Justices of the district where such estray may be tolled, or any two Justices of the County, any thing contained in the before recited Act, to the contrary thereof notwithstanding.

Sec. III. The Justice for his services, exclusive of commissions, shall receive the sum of twenty-five cents.

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*Six months, by Act of 1523, [vol. IV. 187.] three months by Act of 1845, sec. 29.
ESTRAYS—1816-'31.

Advertisement of horses, mules, &c.—Expenses and fees.

An Act to alter and amend the several Estray Laws now in force in this State.—Approved Dec. 4, 1816. Vol. III. 280.

20. Sec. I. From and after the first day of March next, it shall be the duty of the Clerks of the Inferior Courts of this State respectively, within ten days after they or either of them may have received from any Justice of the Peace (of the County for which he is the Clerk,) before whom any estray horse, mare, colt, gelding, filly, ass, or mule, may have been posted, in conformity with the estray law now in force in this State, a description of such estrayed horse, mare, colt, gelding, filly, ass, or mule, to advertise such estray or estrays according to the description thereof, which he may have received as aforesaid, in the Georgia Journal, Augusta Chronicle, or Savannah Republican, and the proprietors of said papers shall receive as compensation for the publication of each such estray, the sum of one dollar and fifty cents.

21. Sec. II. The said Clerks respectively, shall be authorized to pay out of the moneys arising from the sales of estrays, the expense incurred for such advertisement or advertisements, unless it should happen that the owner or owners of such estray or estrays, may prove them or either of them away previous to sale—then and in that case, it shall be the duty of such Clerk to demand and receive of the owner or owners of such estray or estrays, the full amount of the expenses incurred for such advertisement or advertisements, previous to the delivery of such estray or estrays.

22. Sec. III. The Clerks of the Inferior Courts aforesaid, shall be entitled to the sum of fifty cents for transmitting the description of said estrays, from the owners if proven away, or from the proceeds of the sale of such estray, if sold.

23. Sec. IV. In all cases where expenses have been incurred, arising under this Act, by advertising such estray or estrays, it shall be the duty of the said Clerks respectively, to remunerate such expense out of the money arising from the sale of such estrays; and it shall be the duty of all such Clerks to keep a fair and regular book of entry of all such expenditures to exhibit to the Inferior Courts of their Counties respectively, upon application.

An Act to compel the Clerks of the Inferior Courts of the different Counties in this State to claim Estrays when levied on by execution.—Approved Dec. 26, 1831. Pam. 86.

24. Whereas, there is a practice prevailing in many of the Counties in this State, with plaintiffs in execution, to hunt out estrayed property, and have their executions levied on the same; and, whereas, there is no provision by law for any person to claim said property for the benefit of the County where the same may occur—for remedy whereof,

* Changed in various Counties, so that the exceptions far outnumber the general rule; see "Local Laws."
Sec. I. Be it enacted, That from and immediately after the passage of this Act, it shall be the duty of the Justices of the Peace and Constable or Constables, of each Captain's district in every County in this State, to notify the Clerk of the Inferior Court of the County wherein they reside, whenever it comes within their knowledge, or when they have any reason to believe, that any execution has been levied on estrayed property.*

25. Sec. II. In all cases where the Clerks of the Inferior Courts of the different Counties in this State, shall receive the information aforesaid, and also, where the fact may come within their own knowledge, [it shall be lawful] for them to hand a written notice to the Constable or Sheriff, as the case may be, (who may have levied on any estrayed property,) stating that he claims the said property for the benefit of the County as an estray; which said notice shall be sufficient to compel the Constable or Sheriff, as the case may be, to return the said fi. fa. or fi. fias. and notice, to the next Justice's Court of the district wherein the levy may have been made, if the said fi. fias. issued from a Justice's Court, or if the same issued from an Inferior or Superior Court, then and in that event to the next Inferior or Superior Court of the County wherein the levy may have been made.

26. Sec. III. When any notice with the execution as aforesaid shall be returned to any of the Courts aforesaid, it shall be the duty of the Court, to cause an issue to be made up, between the said Clerk of the Inferior Court and the plaintiff in execution, which shall be tried in the same manner as all other claim cases, the burden of proof resting on the plaintiff in execution.

27. Sec. IV. In all cases where the issue shall be determined against the Clerk, the County shall pay the cost.

An Act to alter and amend an Act entitled an Act to compel the Clerks of the Inferior Courts of the different Counties in this State, to claim Estrays when levied on by execution, passed the 26th December, 1831.—Assented to Dec. 23, 1840. Pam. 77.

28. Sec. I. Be it enacted, That from and after the passage of this Act, all Constables in whose hands executions may be placed for the purpose of levying on estrays, the said Constable in whose hands such execution is placed, shall notify the taker up of all such estrays, that he has levied such execution on the estray or estrays, posted by him or her, and upon such notice being given to the taker up, it shall be, and he is hereby required to claim all estrays levied on by such Constable, and to notify such Constable that he has claimed such estrayed property for the benefit of the County, which claim shall be returned and disposed of in the same manner as claims made by the Clerks of the Inferior Court agreeably to the above recited Act.

[Sec. II. Repealing clause.]

*For Act declaring deeds to estrays levied on under certain circumstances void, see "Penal Laws," sec. 372.
†By Act of 1840, the taker up is made the claimant, sec. 28.
An Act to amend an Act to amend the Estray Laws of this State, so far as relates to the time of advertising and tolling horned cattle, sheep, goats or hogs, before they are sold; assented to December twentieth, eighteen hundred and twenty-three.—Approved Dec. 26, 1845. Pam. 27.

29. Sec. I. Be it enacted, That from and after the passage of this Act, all horned cattle, sheep, goats and hogs, that may be tolled in conformity with the estray laws now in force in this State, may be sold at the expiration of three months from the time they are tolled.

Sec. II. All laws or parts of laws militating against this Act, be and the same are hereby repealed.
EVIDENCE.*

ART. I. INTERROGATORIES, AND TESTIMONY DE BENE ESSE.

II. RECORDS, AND DOCUMENTARY AND WRITTEN EVIDENCE.

III. WITNESSES AND ORAL EVIDENCE.

An Act for pointing out the method of compelling persons residing in this State, to give evidence in causes pending in another.—Approved Dec. 16, 1794. Vol. I. 212.

Whereas, much inconvenience has arisen to individuals from no compulsory process having been adopted in the different States, to oblige the citizens or residents thereof, to give evidence in suits pending in other States; for remedy whereof, as far as it might be occasioned by persons residing within the State of Georgia,

1. Sec. I. Be it enacted, 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 the 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

*For evidence in cases of contested elections, see “Elections,” sec. 21.

For appointment of commissioners in other States, to take affidavits, see “Conveyances, &c.” sec. 38.

For form and mode of Affirmation, see “Affirmation.”

For various forms of oaths prescribed, see titles embracing the particular subject matter.

For Act relative to affidavits of non-resident creditor in cases of Attachment, see “Attachment, &c.” 55.

For Act requiring the C. C. O. to keep a file of newspapers containing notices, see “Executors and Administrators,” sec. 16.

For Acts in relation to Evidence in criminal cases, see “Penal Laws.”

For various Acts in relation to grants, see “Lands.”

As to evidence in Justices’ Court, see title “Justices of the Peace,” sec. 9, 11.

Before commissioners of pilotage, see “Agriculture, &c.” Article “Shipping and Pilotage,” secs. 30, 33, 35.

†See “Judiciary,” sec. 62, as to perpetuating testimony.

‡The provisions of this Act extended to cases of commissions issued from our own Courts, Act of 1839, sec. 11. See also Act of 1840, sec. 12.
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, indorsed on or annexed to the said subpoena, and returned 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. Sec. II. 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.

Judiciary Act of 1799. Vol. I. 292. [For title and Act in full, see Appendix.]

3. Sec. XXIII. 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.†

*May issue in blank; see Act of 1850, sec. 11.
†For Interrogatories in Justice's Courts, see "Justices of the Peace," sec. 11. This Act amended, see sec. 4.

[1.] If the cross interrogatories are not answered, the deposition should not be read. 1 Kelby, 551. 7 Ga. 348.
The commissioners should, like Jars, be free from all bias. The clerk of counsel is incompe-
An Act the more effectually to insure the testimony of witnesses, going beyond seas, or removing without the jurisdiction of the State, and aged and infirm persons.—Approved Dec. 8, 1806. Vol. II. 323.

[Repealed by provisions of Act of 1838, sec. 10.]

An Act to alter and amend the XXIIIrd section of the Judiciary law of this State, passed February 16, 1799.—This Act approved Dec. 16, 1811. Vol. III. 380.

Whereas, the Judiciary law of this State does not fully embrace the mode necessary to procure testimony by interrogatories, as justice in its fullest extent requires;

4. Be it enacted, &c. 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 cannot 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. 1

An Act to carry into effect the Penal Code of this State, and the Penitentiary system founded thereon.—Approved Dec. 19, 1816. Vol. III. 659.

5. Sec. XXIst of the rules. Where any convict confined in the

*See Act of 1838, sec. 10.
†For the remainder of this Act in force, see "Penitentiary," sec. 1.

tent 5 Ga. 335. A law student in his office is incompetent. 5 Ga. 424.

The words of the deposition to be taken in their ordinary meaning. 6 Ga. 178. And so read as to make sense of every part. 6 Ga. 189. As to questions. 8 Ga. 421.

The party crossing may withdraw his questions if he chooses, the other party having the liberty to read them at his option. 6 Ga. 356.

New interrogatories cannot be propounded at the time of executing the commission 8 Ga. 427.

[1.] Does not apply to criminal cases. In such, deft must get an order from the Judge. 4 Ga. 335.

The interrogatories must show on what ground the commission is sought. 4 Ga. 380. If the ground stated ceases to exist before the execution of the commission, the answers cannot be read. Ibid. Or if the witness return to reside in the County after the execution of commission. 6 Ga. 178.
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.

An Act to regulate the mode of taking testimony by commission and de bene esse within this State; and to alter and amend the several laws relating thereto.—Approved Dec. 20, 1823. Vol. IV. 212.

6. The Act entitled "An Act the more effectually to insure the testimony of witnesses going beyond seas, or removing without the jurisdiction of the State, and aged and infirm persons," passed the 8th 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.*

7. Sec. II. 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 case, on the terms and under the restrictions specified in the said Act.†

Sec. III. All laws and parts of laws militating against this Act are hereby repealed.

An Act to point out and regulate the manner of taking the Testimony of Females, in certain cases.—Approved Dec. 19, 1829. Vol. IV. 226.

8. 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.

9. Sec. II. 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

*See Act of 1838, sec. 10, superseding the Act of 1806.
†See "Judiciary," sec. 62.
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."

Sec. III. All laws or parts of laws militating against the above recited Act are hereby repealed.

An Act to amend an Act to regulate the mode of taking Testimony by commission and de bene esse within this State, and to alter and amend the several laws relating thereto, approved 20th December, 1823.—Assented to Dec. 28, 1838. Pam. 245.

10. Sec. I. Be it enacted, That the Act (for which this is amendatory) more effectually to insure 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 [so] 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 [on] 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.

Sec. II. All laws, or parts, or amendments of laws militating against this amendatory Act, be, and the same is hereby repealed.

An Act to extend the operation of the Act passed on the 16th day of December, 1794, entitled an Act for pointing out the method of compelling persons residing in this State to give evidence in causes pending in another.—Assented to Dec. 21, 1839. Pam. 145.

11. Sec. I. Be it enacted, That all the provisions of the said recited Act 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.‡

*See Act of 1840, sec. 12.
†See Act of 1811, sec. 4.
‡See next section.
An Act to point out and regulate the manner of taking testimony by commissioners in certain cases.—Assented to Dec. 22, 1840. Pam. 111.

12. Sec. I. Be it enacted, 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 [for such Judge] 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 [to] 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.

13. Sec. II. 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; and that all laws and parts of laws militating against this Act, be and the same are hereby repealed.

An Act to make valid all commissions which have heretofore been or may hereafter be issued in blank for the purpose of taking testimony in any case arising or which may have arisen in the Courts of Law and Equity of this State.—Approved Feb. 13, 1850. Pam. 115.

14. Sec. I. Be it enacted, That from and after the passage of this Act, all commissions which have heretofore been, or may hereafter be issued in blank for the purpose of taking testimony in any case pending, or arising in the Courts of Law and Equity in this State, shall be valid and as effectual as if the names of the commissioners had been inserted by the officer issuing the same.

Sec. II. All laws and parts of laws militating against this Act, be and the same are hereby repealed.

An Act to regulate the taking of testimony by interrogatories for the Courts of this State, and to amend an Act entitled an Act to authorize parties to compel discoveries at Common Law, approved December 17th, 1847.—Approved Feb. 23, 1850. Pam. 276.

15. Sec. I. Be it enacted, That in all cases in the Superior and Blank commissions.
Inferior Courts of this State, where it may become necessary to take testimony by interrogatories as heretofore practised, commissions may issue in blank, in so far as relates to the names of the commissioners; but the names of witnesses intended to be examined shall be distinctly specified in the notice served upon the adverse party preparatory to issuing the commission.*

16. Sec. II. When any person, either plaintiff or defendant, shall desire to file his, her or their written interrogatories, for the purpose of compelling the discovery contemplated by the Act entitled an Act to authorize parties to compel discoveries at Common Law, approved December 17th, 1847, he, she or they shall be authorized to do so either in term time or vacation of the said Superior or Inferior Court, and obtain an order from a Judge of said Court, requiring the adverse party to answer the same in writing, according to the provisions of the Act of which this is amendatory.†

ART. II. RECORDS, DOCUMENTARY AND WRITTEN EVIDENCE.‡

Sec. 17. Document law.
  " 19. Deputy Clerk.
  " 20. Deputy Secretary of State.
  " 23. Laws and Resolutions.

Sec. 24. Official attestation.
  " 25. Copy of bond.
  " 28. Oral evidence as to deed.
  " 29. What is a seal.
  " 30. Physicians, &c. books.

An Act supplementary to the Judiciary Act.—Approved Nov. 26, 1802. Vol. II. 56.

17. 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.†

*Re-enacted by same Legislature, sec. 14.
†Enacted twice by same Legislature, see “Judiciary,” Art. “Jurisdiction,” sec. 56, where all the Acts on this subject may be found.
‡For various Acts authorizing records of deeds, bills of sale, mortgages, marriage contracts, &c. and making copies evidence, see “Conveyances and Registry.” See same title as to certain deeds made by academy commissioners, sec. 41. As to bl. /a. recorded and made evidence for purchasers at Sheriff’s sale, sec. 60. As to powers of attorney and specialties made in other States, sec. 16. As to certificates of consuls and vice-consuls, sec. 62. As to certified copies of Consuls’ bonds, see “County Officers,” sec. 73. For Act making County records transcribed evidence, see “County Funds and Records,” secs. 16 and 27. As to recording evidence in criminal cases, see “Penal Laws,” secs. 345, 399. As to registry of births, see “County Officers,” sec. 34. For Act authorizing Tax Collectors’ deeds to go in evidence in certain cases to prove the contents thereof, see “Conveyances,” &c. sec. 53. As to copies of final receipts of executors, &c. recorded, see “Executors, Administrators, &c.” sec. 127. For certificates of marriage, &c. see “Executors,” &c. sec. 25, 22. Certified copy of jail bounds evidence, see “Insolvent Debtors,” sec. 28.

An Act to legalize and make valid certain acts of Sheriffs and Clerks, and to regulate the admission of evidence in the several Courts of Law and Equity in this State, so far as relates to certain papers.—Approved Dec. 15, 1810. Vol. II. 643.

Whereas, considerable doubts have arisen in the Courts of this State relative to the official returns of Sheriffs and deputy Sheriffs, whose bonds and oaths have not been entered on the minutes of the Court before which such officers may have qualified,

And whereas, doubts have also arisen in said Courts as to the propriety of admitting deeds to go as evidence before a Jury, which a deputy Clerk may have certified as to the enrolment; for remedy whereof,

18. Sec. I. Be it enacted, &c. That the official returns of all Sheriffs and deputy Sheriffs shall be, and the same are hereby legalized and made valid to all intents and purposes, as if made by a Sheriff or deputy, who had been qualified according to law.*

19. Sec. II. All deeds, mortgages, conveyances, and other writings enrolled by any deputy Clerk in the proper Court, and certified by him as such, the same shall be received and admitted as evidence in any Court of this State, in like manner as if the same had been recorded by the chief Clerk.*

20. Sec. III. All grants, copy-grants, testimonials, or any other document or paper whatsoever, heretofore issued out of the Secretary of State's office, purporting to be signed by a deputy Secretary of State, shall be held and taken as legal, provided, the said paper shall be ascertained to be genuine; Provided, nothing contained in this Act shall be so construed as to admit any grant obtained on the south side of the Oconee and Appalachee rivers, previous to the late land lotteries as evidence in any Court within this State.

21. Sec. IV. In all cases brought by any indorsee or indorsees, assignee or assignees, on any bill, bond, or note, before any Court of Law and Equity in this State, the assignment or indorsement, 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, indorser or indorsers; any law, usage, or custom to the contrary thereof notwithstanding.

An Act to legalize and make valid two manuscript books of the old records of the Executive Department.—Approved December 16, 1811. Vol. III. 289.

22. From and after the passing of this Act, the two manuscript books, A and B, in the Executive Department, containing the records of said Department from the year 1777, to the year 1784 inclusive, made valid.

*For Act of 1813, making valid certain other acts of Sheriffs and Clerks, see "County Officers," secs. 17, 18, 24.
All laws and resolutions, published by authority, shall be public laws, so far as to be noticed by the Courts. The attestation of any officer in the State to the copy of any paper of record, or of file, shall make it evidence; Provided the original is accounted for.

23. Sec. I. 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.

24. Sec. II. 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.*

Sec. III. [See "Conveyances, &c." sec. 23.]

An Act declaring certified copies of official bonds testimony in certain cases.—Approved Dec. 20, 1823. Vol. IV. 213.

25. 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, where such bond is of file or recorded, which copy shall be sufficient testimony in the cause, unless the same shall be denied on oath.†

An Act to amend an Act entitled an Act, to regulate the admission of evidence, in certain cases, in the several Courts of Law and Equity.

*The Act of 1830, provides for the same object with slight variation; both are inserted, sec. 26.
†As to Constables' bonds, see County Officers, sec. 74; Sheriffs' bonds, same title, sec. 71.
ty in this State, and to provide for the recording of conveyances of personal property.—Approved Dec. 21, 1830. Pam. 121.

26. 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 thereunto, shall be admitted as evidence, before any Court of Law or Equity in this State;¹ 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 pertain, or that it may be accounted for.⁴

All laws, and parts of laws, militating against this Act are hereby repealed.

An Act amendatory of an Act, assented to the 21st Dec. 1820,† authorizing the certificates and acts of Notaries Public, to be received in evidence in certain cases.—This Act approved Dec. 26, 1836. Pam. 170.

27. Sec. I. 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,² 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.

Sec. II. [Repeals all conflicting Acts.]

*See ante, sec. 24.   †1822, see Vol. IV, 290.  ²For mode of appointment, see "County Officers," secs. 26, 41, 43.

(1.) Evidence to prove a transfer appearing on the execution. 3 Kelly, 226.
(2.) Evidence of notice as well as of non-payment. 3 Kelly, 489.
Of all the facts therein stated. Ibid.
An Act to regulate the admission of Oral Evidence, in reference to Written Instruments, in certain cases.—Assented to Dec. 25, 1837. Pam. 110.

Whereas, it is now the practice, in some of the Circuits of this State, to admit oral evidence to prove that deeds and bills of sales absolute upon their face, were intended as mortgages, or securities for the payment of money, or other thing, only without any charge of fraud in obtaining them. And whereas, such practice may lead to serious injuries to the rights of the good people of this State, over their property, and may present strong inducements to the commission of frauds and perjuries; for remedy whereof,

28. Sec. I. Be it enacted, That from and immediately after the passing of this Act, oral evidence shall not be received in any Courts in this State, to show that a deed or bill of sale absolute upon its face, made after the passing of this Act, was intended as a mortgage or security for the payment of money or any other thing, unless there is a charge of fraud in obtaining the same, in which case oral evidence, going to show the fraud only, may be received; any law, usage, custom, or practice to the contrary notwithstanding.

Sec. II. All laws and parts of laws militating against this Act, be and the same are hereby repealed.

An Act to declare the force and effect of certain Contracts and Instruments in Writing, therein specified.—Assented to Dec. 29, 1838. Pam. 72.

Whereas, a diversity of decisions has prevailed in the several Courts of this State in regard to the force and effect of certain written contracts and instruments in writing hereafter mentioned, for remedy whereof, and for the purpose of securing uniformity of decisions hereafter to be made in the several Courts of Law and Equity in this State respecting such instruments:

29. Sec. I. Be it enacted, That from and immediately after the passing of this Act, whenever any written contract or other instrument in writing shall be produced in evidence, or for any other legal purpose whatever, before any Court of Law or Equity in this State, during the progress of any bill or suit whatever, pending in any of said Courts, and such written contracts or instrument in writing shall have a scroll or other representation of a seal annexed thereto instead of a seal composed of a wafer or wax, or other tenacious substance; and also whenever it shall be shown by words expressed in the body or conclusion of said written contract or other instrument in writing, that it was the intention of the party or parties subscribing the same, to become bound by, or to execute a writing obligatory or sealed instrument, though no scroll or seal has been annexed to said written contract or other instrument, shall be held, taken and construed by

said Courts, both at Law and in Equity, to have all the force, effect, and dignity of writings obligatory or instruments under seal: Provided, that the provisions of this Act shall not extend to any instruments heretofore executed.

Sec. II. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

**An Act to be entitled an Act to authorize the recovery by law, of open accounts in favor of certain classes of persons therein named, upon the same proofs which is now allowed by the laws of this State, in favor of tradesmen and merchants.**—Assented to Dec. 23, 1843. Pam. 125.

30. Sec. I. Be it enacted, That from and after the passage of this Act, physicians, blacksmiths, and all other persons in the practice of any regular craft, shall be allowed to sue for and recover judgment in the several Courts of Law in this State, on open accounts in their favor, upon the production and proof of their books of account, in the same manner, and on the same terms as is now authorized by existing laws, in cases where tradesmen and merchants are parties plaintiff in said Courts.

Sec. II. All laws and parts of laws militating against this Act, be and the same are hereby repealed.


Sec. I. 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 March 27, 1804.** 2 Gray. Digest, 180.—Statutes at Large, Vol. II. p. 298.

Sec. I. 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 thereto 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 com-

*See note to next Act.

[1.] Separate sheets of paper containing the original entries, may be given in evidence as the books of the party. 1 Kelly, 231.

Prohibitory proof necessary. 1 Kelly, 231. 8 Ga. Rep. 74.
missioned 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.

Sec. II. Extends the provisions of both Acts to "the Territories and Countries subject to the jurisdiction of the United States."

ART. III. WITNESSES—ORAL EVIDENCE.

31. Sec. XIX. 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 subpoena 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 subpoena 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 Sheriff, 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 evidence that such subpoena was duly executed.

32. Sec. XX. 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 defaulting 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 sufficient 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 dam-

*See Art. IV, Sec. 1, Constitution of the United States.
For decisions of the United States Courts upon this Article and these Acts, see 7 Cranch, 483. 6 Peters, 317. 4 Dallas, 412. 7 Cranch, 463. 9 Cranch, 122. 6 Wheaton, 129. 11 Wheaton, 392. Peters' C. C. R. 153, 74. 4 Washington, C. C. 657. 3 Washington, C. C. R. 126.
†As to oral evidence to make an absolute deed a mortgage, see Art. "Records, &c.," sec. 28.
Free from arrest on civil process see "Judiciary," sec. 50.
Persons convicted of perjury or subornation, incompetent; see "Penal Laws," 162.
Indians incompetent, see "Indians."
Superior and Inferior. As to Justices' Courts, see "Justices of the Peace," 11. Witnesses to a will bound to attend its probate; see "Executors, Administrators, &c." 85.
age which he, she, or they may have sustained, by reason of such non-attendance.

33. Sec. XXI. When a subpoena 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.

34. Sec. XXII. 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, of 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 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 cause, 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 point.


Whereas, doubts do exist as to the propriety of admitting Grand Jurors to give evidence against persons who may have been sworn before them, when in session as a Grand Jury, on account of that part of the oath which requires them to keep secret the State's counsel, their own, and their fellows', which secrecy ought not to exist longer than the term, or after the bill is publicly read in Court; for remedy whereof,

35. Sec. I. Be it enacted, &c. 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.

Sec. II. [Oath altered accordingly. See Judiciary, Art. Juries.]

An Act to enable parties litigant in the Superior and Inferior Courts of this State, to compel the production of written testimony, when the same may be in the possession of persons not parties to the

*Signature of Judge dispensed with, sec. 44.
cause, and residing without the County where such cause is pending; and for other purposes.—Approved Dec. 19, 1829. Vol. IV. 226.

36. Whereas, parties litigant in the Courts of this State frequently suffer great inconvenience, and sometimes gross injustice, by reason of the difficulty of procuring written testimony which may be necessary to the successful prosecution or defence of his cause, where the same happens to be in the possession of persons not parties to the cause, and residing without the County in which the cause is pending; for remedy whereof,

Be it enacted, 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 desirous of procuring such testimony, issue a subpoena 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 subpoena 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 subpoena was duly served.

37. Sec. II. When a subpoena 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 such subpoena, deliver to the party at whose instance the subpoena was sued out, or his attorney, or file in the office of the Clerk of the Court from which such subpoena issued, the paper, the production of which is required by such subpoena, 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 subpoena; 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 subpoena duces tecum.
38. Sec. III. In any cause now pending, or which may here-
after 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 con-
tents of such written instrument.

Sec. IV. All laws and parts of laws militating against this Act, Repealing
are hereby repealed.

An Act to compensate persons who may be compelled to attend the Supe-
rior Courts of this State as witnesses in behalf of the State, in
Counties other than where such person or persons may reside.—
Approved Dec. 30, 1836. Pam. 278.

39. Sec. I. From and after the passage of this Act, that any
person or persons who may be compelled, by subpoena or recogni-
zance, to attend any of the Superior Courts of this State, as a wit-
ness on the part of the State, in Counties other than where such
person or persons reside, shall receive for each day, while he or she
may be in attendance on said Court, the sum of two dollars, and the
like sum of two dollars, for every thirty miles, he, she, or they, may
travel, in going to, and returning from said Court, which said several
sums shall be taxed in the bill of cost, and paid for out of the Coun-
ty funds, in such County as the case may be pending, as soon as
such case may be disposed of by said Court.

40. Sec. II. Any person or persons, who may attend the Supe-
rior Courts as above directed, shall be entitled to such pay as is
therein stipulated, whether there be a conviction of the defendant
or not, upon his making affidavit before some Judge of the Superi-
or, or Justice of the Inferior Court, or Justice of the Peace, to the
number of days which he or she has been in attendance on said Court,
and the number of miles he or she will travel, in coming to and re-
turning from said Court, which said affidavit must be signed by the
presiding Judge, and countersigned by the Clerk of said Court, and
in that case, it shall become a warrant on the County Treasurer, or
Clerk of the Inferior Court of such County wherein the witness
has been in attendance.

41. Sec. III. Nothing herein contained shall be so construed,
as to prevent the cost being collected in the same manner as hereto-
fore pointed out by law, from any defendant or defendants in State
cases.

42. Sec. IV. So much of said cost when collected, as has been
paid out by the County Treasurer, or the Clerk of the Inferior
Court, to witness or witnesses who may reside without the limits of
such County, shall be paid over by the Sheriff or Clerk of the Superi-
or Court, to such County Treasurer or Clerk of the Inferior Court,
as may have paid the same, and be applied to County purposes.

(1.) Does not apply to defendants' witnesses. 7 Ga. 443.
An Act to remove all disabilities whatever from persons in this State from testifying in any of the Courts thereof, or having their oath or affirmation, where the same is necessary to secure any right or interest whatever, by reason of any religious opinion he, she or they may entertain or express.—Assented to Dec. 11, 1841. Pam. 144.

43. Sec. I. Be it enacted, 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.

An Act to amend the laws of this State, pointing out the manner of collecting witnesses' fees for their attendance, under subpoena, in certain cases.—Assented to Nov. 26, 1842. Pam. 167.

44. Sec. I. Be it enacted, 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 subpoenas, 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.

All laws and parts of laws militating against this Act be, and the same are hereby repealed.

An Act to regulate the testimony of Attorneys at Law.—Approved Feb. 21, 1850. Pam. 46.

45. Be it enacted, That from and after the passage of this Act, it shall not be lawful for any attorney at Law or in Equity in any case hereafter commenced, to give testimony in any Court of Law or Equity in this State, of any matter or thing, either for or against his client, the knowledge of which he may have acquired from his client, or during the existence and by reason of the relationship of client and attorney: Provided, nevertheless, That no attorney shall be exempted from making answer as defendant, when a proper case shall be made in Equity, and his answer required as by the laws now in existence.

All laws and parts of laws militating against this Act be, and the same are hereby repealed.
EXECUTORS AND ADMINISTRATORS, COURTS OF ORDINARY, GUARDIANS, ORPHANS, POOR, MARRIAGE LICENSES, IDIOTS, LUNATICS, &C.

ART. I. COURTS OF ORDINARY.

II. DISTRIBUTION OF ESTATES.

III. EXECUTORS', ADMINISTRATORS' AND GUARDIANS' DUTIES.

IV. IDIOTS AND LUNATICS.

V. POOR LAWS.

VI. WILLS.

ART. I. COURT OF ORDINARY.—OFFICERS AND JURISDICTION.

Sec. 1. Jurisdiction—Clerk.
Sec. 2. Marriage License.
Sec. 3. Clerk's fees.
Sec. 4. Entails.
Sec. 5. Return on marriage license.
Sec. 6. Appeal.
Sec. 7. Citizens only Administrators.
Sec. 8. Jurisdiction.
Sec. 9. Terms—Probate of Will.
Sec. 10. Opening of Court.
Sec. 11. Adjournment.

Sec. 12. Clerk may open, &c.
Sec. 13. Probate out of County.
Sec. 15. Original will—Covant.
Sec. 16. File of newspapers.
Sec. 17. Open to inspection.
Sec. 18. Administration—where granted.
Sec. 19. Guardianship—where.
Sec. 20. Term second Monday January.
Sec. 21. Proceedings legalized.
Sec. 22. License to Jewish ministers.

An Act to carry into effect the sixth section of the third article of the Constitution, and to amend an Act entitled, &c. [The Act of 1789, see sec. 59] and to prevent Entails.—Approved Feb. 16, 1799. Vol. I. 219.

1. Sec. I. From and after the passing of this Act, the Inferior Courts in each County shall have jurisdiction1 and authority to hear and determine all causes, matters, suits, and controversies, testamentary, which shall be brought before them touching the proof of wills; and shall examine and take the proof of wills,† grant probate thereof, and shall hear and determine the right of administration of estates of persons dying intestate,‡ and to do all other things touching the granting letters testamentary and letters of administration according to law and right;§ and shall appoint its own Clerk, who shall be commissioned by the Governor,2 and before he enters on the duties of his office shall take an oath well and truly to perform the duties

*As to the power of the Court to compel the attendance of witnesses, see Art. "Executors," &c. sec. 55.
†Witnesses must attend, see sec. 85 this title. See also sec. 9, authorizing probate in vacation. Also sec. 13, in County where testator died.
‡See Act of 1847, sec. 18, as to County in which administration may be granted. No administration on an Indian's estate; see "Indians."
§See sec. 8, recapitulating its jurisdiction.

[2] The commission is only prima facie evidence of right, and the Courts may look behind it to inquire into the validity of the election. 8 Ga. Rep. 360.
required of him as Clerk of the Court of Ordinary, to be administered by one of the Judges thereof.*

Sec. II. [As to letters of administration, see sec. 73 of this title.]

2. Sec. III. The Clerks of the Courts of Ordinary in the several Counties shall grant marriage licenses, directed to any Judge, Justice of the Inferior Court, Justice of the Peace, or minister of the gospel,† to join persons of lawful age, and authorized by the Levitical degrees to be joined together in matrimony; and where such persons intending to marry shall have the bans of marriage published three times in some public place of worship, it shall be lawful for such Judge, Justice of the Inferior Court, Justice of the Peace, or minister of the gospel, being duly certified thereof, to marry the persons whose bans have been so published; and any person marrying any couple without such license or publication of such bans shall forfeit §500, to be recovered for the use of the academy of the County, by action of debt in any Court having cognizance thereof, in the name of the commissioners of such academy.

3. Sec. IV. The fees of the Clerk of the Court of Ordinary shall be the same as the fees heretofore allowed to registers of probates.​

4. Sec. V. Estates shall not be entailed. [See Conveyances, sec. 20, and note thereto.]

Sec. VI. So much of the said recited Act as comes within the purview of this Act shall be, and the same is hereby repealed.

*See further as to the appointment of Clerk, filling vacancies, his bond, &c. "County Officers," secs. 11, 19, 31, 69. For his duties and fees, see generally the Acts under this general title and "Fees," secs. 11, 37 and note.

†Who must make return thereon to the Clerk, sec. 5. As to registry of births, see "County Officers," sec. 34. For penalty for marrying a couple without a license, see "Penal Laws," sec. 239.

†For fees of Register of Probates, see "Fees," secs. 11, 37, and note.

An Act to alter and amend the foregoing.—Approved Dec. 6, 1805. Vol. II. 259.

5. Sec. IX. It shall be the duty of all ministers of the gospel, Judges, Justices of the Inferior Courts, or Justices of the Peace, who shall hereafter join together any person in the bonds of matrimony, to make a return on the marriage license of the actual intermarriage of the parties, and the day on which the same was solemnized, to the Clerk of the Court of Ordinary, whose duty it shall be to enter the same in a book to be kept by him for that purpose, for which he shall be entitled to ask and receive the sum of twenty-five cents, which shall be paid when such license shall be granted; which register, or a certified copy thereof, shall be admitted as evidence of such marriage in any Court where the solemnization of such marriage shall be called in question.

*For the remainder of this Act, see sec. 79 et seq. this title.]
An Act to amend an Act to carry into effect the sixth section of the third article of the Constitution of this State.—Approved Dec. 7, 1805. Vol. II. 268.

Whereas, the Constitution of this State, in the said sixth section of the third article, declares that "the powers of the Court of Ordinary or register of probates shall be vested in the Inferior Courts of each County, from whose decision there may be an appeal to the Superior Court, under such restrictions and regulations as the General Assembly may by law direct," &c.

6. Sec. I. Be it enacted, 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.†

7. Sec. II. No letters testamentary or of administration shall be granted to any person or persons who is or are not a citizen or citizens of the United States, residing in the State of Georgia.

Sec. III. All Acts heretofore passed militating against this Act shall be, and the same are hereby repealed.

An Act to amend an Act for the more effectually securing the probate of Wills, limiting the time for Executors to qualify and widows to make their election, and for other purposes therein mentioned.—Approved Dec. 15, 1810. Vol. II. 668.

8. Sec. I. The Inferior Court when sitting for ordinary purposes shall be known only as the Inferior Court sitting for that purpose; and that their Clerk shall be known as the Clerk of Ordinary only; and that the said Inferior Court when sitting for ordinary purposes, shall have the original jurisdiction of all testate and intestate estates, appointing administrators and guardians, to qualify executors, ad-

*To be tried by a special Jury, see "Judiciary," sec. 132. See further as to appeals, "Judiciary," sec. 147, 150.
†Temporary letters on application to the Clerk of the Court of Ordinary, see sec. 73.
(1.) A bond payable to the appellees is sufficient and valid. 8 Ga. Rep. 256.
(2.) See 7 Ga. Rep. 495.
(3.) The order of appointment of Guardian must show either that the person or property of the ward was within the jurisdiction of the Court. 7 Ga. Rep. 332.
ministrators, and guardians, and to bind out orphans, and all such other matters and things as appertain or relate to estates of deceased persons, whether testate or intestate.*

Sec. VI. [Temporary; as to Clerks previously elected.]

9. Sec. VII. The said Inferior Court shall meet for ordinary purposes on the first Monday in January next,† and on the first Monday in every other month thereafter; provided, that when the business of the Court shall require it, the Justices may by adjournment hold meetings at any other time, or at any other day than those before appointed for their meetings.‡ And provided also, that two or more of the said Justices of the Inferior Court, shall be authorized in vacation time, to admit any executor of a will to prove the same before them; but there shall be a Court, and at a regular and legal time of meeting thereof, before the same shall be admitted to record.

[For the other sections of this Act, see this title, secs. 89 to 92.]

An Act to alter and amend the 47th section of the Judiciary System of this State, and pointing out the manner of filling vacancies in the offices of Clerk of the Superior and Inferior Courts.—Approved Dec. 19, 1817. Vol. II. 161.

Sec. I. [Superseded, 1826, see County Officers, sec. 52.]

10. Sec. II. In the absence of the Sheriff or his deputy, it shall and may be lawful for the Judges of the Court of Ordinary, to direct said Court to be opened and attended by the Coroner, or any Constable of the County; and they may make a reasonable compensation to the said Coroner or Constable for his services.§

An Act to authorize the adjournment of the Superior and Inferior Courts and Courts of Ordinary in certain cases, by the officers therein named.—Approved Dec. 8, 1823. Vol. IV. 211.

Whereas, it frequently happens from unavoidable circumstances that the Judge of the Superior Courts—a majority of the Justices of the Inferior Courts, cannot attend at the regular term of said Courts and that a term is thereby lost, to the great injury of those concerned, as well as a delay of justice, be it therefore, &c.

[Secs. I. III. and IV. See Judiciary, sec. 42.]

11. Sec. II. If, from any circumstance as aforesaid, a failure should take place in making a Court of Ordinary in any of the Counties in this State, either at a regular term or at any adjourned term, that it shall and may be lawful for any one Justice of the Inferior

*See sec. 1, this title. See also subdivision "Idiots and Lunatics," sec. 174, as to Guardians of Idiots and Lunatics.
†Second Monday in January, see sec. 20.
‡For officers to attend and open Court, see secs. 10, 11, 12; adjournment in certain cases, 11, 12.
§See Acts of 1823, secs. 11 and 12.
An Act to amend an Act, &c, and to provide for the opening and adjourning of the several Courts of Ordinary in this State, in certain cases.—Approved Dec. 20, 1823. Vol. IV. 211.

Sec. I. [See Judiciary, sec. 291.]

12. Sec. II. It shall be the duty of the Sheriff of each County in this State, either by himself or deputy, to attend at the Court house of their respective Counties, of each and every day of holding Courts of Ordinary, for the purpose of opening and adjourning said Courts, unless such Sheriff shall procure some Constable of such County to perform such duty; and in case the Sheriff shall at any time fail to comply with the requisitions of this Act, it shall and may be lawful for the Clerk of said Court to open and adjourn such Court, any law to the contrary notwithstanding.*

An Act to authorize the probate of Wills in certain cases, in the County where the testator died or may die.—Assented to Dec. 29, 1838. Pam. 255.

13. Sec. I. When any person shall depart or has departed his life testate, and when without the limits of the County of the citizenship of said testator, it shall and may be lawful for the will of the said testator to be admitted to probate in the County of the residence of the witnesses to the will of any testator as aforesaid: Provided, said witnesses shall reside at the time of the probate of the will, in the County where said testator died or may die.

14. Sec. II. The certificate under the hand and official seal of the Clerk of the Court, where such probate may be made, shall be sufficient authority and evidence of probate, to authorize the granting of letters testamentary, or administration, with the will annexed, and in the proper County, and under legal restrictions by proper authority.

15. Sec. III. The Clerk of the Court where such will may be proven as aforesaid, shall transmit the original will, together with the certificate aforesaid, to the Clerk of the Court of the County where letters testamentary or administration are, or may be granted, and it shall be the duty of the Clerk of the Court last aforesaid, to record said will, as is now provided by law, and when a caveat shall be filed to said will, the same shall be tried in the County where such letters testamentary or administration are or may be granted.

Sec. IV. All laws and parts of laws militating against this Act, be and the same are hereby repealed.

*See previous sections.
An Act to make it the duty of the Clerks of the Court of Ordinary of the several Counties in this State to preserve the evidence of Legal Notices in certain cases, and in relation to the appointment of Administrators and Guardians in certain cases.—Assented to Dec. 21, 1839. Pam. 38.

16. Sec. I. From and after the passage of this Act, it shall be the duty of the Clerks of the Court of Ordinary of the several Counties in this State, to keep in their respective offices a regular file of the newspaper in which they may advertise the notices required by law to be advertised.*

17. Sec. II. Said newspaper filed as aforesaid, shall at all times be subject to the inspection of any person interested in any notices published therein.

Sec. III. [See Article Executors, &c. sec. 134.]

18. Sec. IV. In all cases hereafter, letters of administration shall only be granted by the Court of Ordinary of the County where the deceased resided at the time of his death, if a resident of this State.†

19. Sec. V. In all cases hereafter, letters of guardianship shall only be granted by the Court of Ordinary of the County where the minor or ward resided at the time application for letters of guardianship is made, if said minor or ward reside in this State.†

Sec. VI. [See Article Executors, &c. sec. 135.]

Sec. VII. [Repealing clause.]

An Act to alter and fix the time of holding the Court of Ordinary and Land Courts, in the several Counties in this State, from the first to the second Monday in January, annually.—Assented to Dec. 23, 1843. Pam. 37.

20. Sec. I. Be it enacted, That from and after the first day of January, eighteen hundred and forty-five, the Court of Ordinary and Land Courts of the several Counties of this State, shall be held on the second Monday in January annually, in place of the first Monday of said month.

21. Sec. II. All business transacted in said Courts which may be held on the second Monday in January, shall be deemed as legal as if the same had been transacted on the first Monday—any law or usage to the contrary notwithstanding.

An Act to authorize Clerks of the Courts of Ordinary in the several Counties of this State to grant Marriage Licenses directed to Jewish Ministers, or other persons authorized to perform the marriage cere-

*For Act directing in what paper he shall advertise, see title "Judiciary," Article "Officers of Court," sec. 388.
†See further as to rules and mode of granting letters, Art. "Executors, Administrators and Guardians." As to probate of wills in certain cases, see previous Act, sec. 13.
Debts, order of payment.

mony between Jews, and to authorize Jews to be married according to their own forms.—Approved Dec. 5, 1849. Pam. 69.

22. Sec. I. Be it enacted, That the Clerks of the Courts of Ordinary shall upon application being made, grant and direct marriage licenses to any Jewish minister or other person authorized to perform the marriage ceremony between Jews, and that such person so performing the marriage ceremony shall make a return on the license in manner and form as is now required by law.

Sec. II. All laws and parts of laws militating against this Act be and the same are hereby repealed.

ART. II. DISTRIBUTION OF ESTATES.*

Sec. 23. Debts—order of payment.

" 24. Trust liabilities.
" 26. Distribution by order of Court.
" 27. Illegitimates.
" 28. Realty—advancements.
" 29. Husband—sole heir.
" 30. Wife—sole heir, when.
" 32. Publication of.
" 33. One year's support.
" 34. Mother—last child.

Sec. 35. Widow marrying.

" 36. Children of former marriage.
" 37. Husband's title.
" 38. Mortgage precedence.
" 39. §100 support.
" 40. Valuation.
" 41. Previous rights.
" 42. Children's support.
" 43. Assessment.
" 44. Return.
" 45. Expenses.
" 46. Illegitimates.

An Act to be entitled an Act to protect the Estates of orphans, and to make permanent provisions for the poor.—Approved Dec. 18, 1792. Vol. I. 220.

23. Sec. X. The debts due by any testator or intestate, shall be paid by executors and administrators in the order following, viz: funeral and other expenses of the last sickness; charges of probate and will, or of the letters of administration,† next debts due to the public; next judgments,‡ mortgages§ and executions: the eldest first; next rent; then bonds or other obligations: and lastly, debts due on open accounts; but no preference whatever shall be given to creditors in equal degree,§ where there is deficiency in as-

*For Act requiring Administrators, &c. to make a dividend at the end of 12 months, see Art. " Executors, &c. " sec. 54.

See also sec. 51, for Act declaring Executor's interest under a will where not expressly mentioned.

For Act in relation to survivorship among joint tenants, see "Judi. cury," Article "Joint Tenants," sec. 293.

†Taxes to be first paid, see "Tax," sec. 14.

‡Debts due as Guardian, Executors or Administrators, sec. 24. See also as to widows' and children's support, secs. 33, 39, 42.

§Explainled by Act of 1845, sec. 38.

§Same provision, Act of 1794, see Art. " Executors, &c. " sec. 53.

(1.) Judgments have priority over debts for rent, bonds, &c. 5 Ga. 271.

Promissory notes are upon the same footing with bonds and other obligations. 5 Ga. 274.

A covenant of warranty of title, when broken, is a specialty. 5 Ga. 274.

Judgments obtained against an administrator, rank only as the debts on which they are founded. 5 Ga. 275.

5, 93. ADMI. &c.—Distribution, &c. 1792. 287.
Notice to creditors—Suits.

Six weeks' notice to be given to creditors.

Creditors must make demand in 12 months, or the executor or administrator not liable out of his own estate.

sets, except in cases of judgment, mortgages that shall be recorded, from the time of recording, and executions lodged in the Sheriff's office, the eldest of which shall be first paid; or in those cases where a creditor may have a lien on any part of the estate. Every executor or administrator shall give six weeks' notice by advertisement in one of the public gazettes in this State, or at three different places of the most public resort in the County, for creditors to render an account of their demands; and they shall be allowed twelve months to ascertain the debts due to and from the deceased, to be computed from the probate of the will or granting letters of administration. And creditors neglecting to give in a state of their debts within the time aforesaid, the executors or administrators shall not be liable to make good the same, nor shall any action be commenced against any executor or administrator for the recovery of the debts due by the testator or intestate, until twelve months after such testator or intestate's death.*

[For the remainder of this Act, see Art. "Executors, &c." sec. 61 to 70, and "Poor," sec. 191.]


[For the first four sections, see Art. "Executors, Administrators, &c." 74.]

24. Sec. V. When any guardian, executor, or administrator, chargeable with the estate of any orphan or deceased person, to him, her, or them committed, shall die so chargeable, his, her, or their executors or administrators shall be compellable to pay out of his, her, or their estate, so much as shall appear to be due to the estate of such orphan or deceased person, before any other debt of such testator or intestate.1

*See further as to suits against them, "Judiciary," sec. 71. Against Administrators de bonis non, "Judiciary," sec. 77.

[1.] Even though reduced to judgment in lifetime of trustee. 1 Kelly, 266.
An Act to amend an Act entitled an Act to carry into effect the sixth section of the fourth article of the Constitution touching the distribution of Intestates' Estates, directing the manner of granting Letters of Administration, &c. Dec. 23, 1789.—Approved Dec. 12, 1804. Vol. II. 193.

25. Sec. I. When any person holding real or personal estate shall depart this life intestate, the said estate, real and personal, shall be considered as altogether of the same nature and upon the same footing, so that in case of there being a widow and child, or children, they shall draw equal shares thereof, unless the widow shall prefer her dower,* in which event she shall have nothing further out of the real estate than such dower; but shall nevertheless receive a child's part or share out of the personal estate. And in case any of the children shall die before the intestate, their lineal descendants shall stand in their place and stead: In case of there being a widow and no child or children, or representative of children, then the widow shall draw a moiety of the estate, and the other moiety shall go to the next of kin in equal degree, and their representatives.† If no widow, the whole shall go to the child or children.‡ If neither widow, child, or children, or legal representative of the children, the whole shall be distributed among the next of kin, in equal degree, and their representatives; but no representation shall be admitted among collaterals further than the child or children of the intestate’s brothers and sisters. If the father or mother be alive, and a child dies intestate and without issue, such father, or mother in case the father be dead, and not otherwise, shall come in on the same footing as a brother or sister would do: [Provided, that such mother, after having intermarried, shall not be entitled to any part or proportion of the estate of a child who shall die intestate and without issue, but the estate of such child shall go to and be vested in the next of kin on the side of the father:++] And provided also, that on the death of the last child intestate and without issue, the mother shall take no part of his or her estate, but the same shall go to and be vested in like manner in the next of kin on the father’s side.]] And in case a person dying without issue, leaving brothers or sisters of the whole and half blood, then the brothers and sisters of the whole and the half blood, in the paternal line only, shall inherit equally; but if there shall be no brother or sister, or issue of brother or sister of the whole or half blood in the paternal line, then these of the half blood, and their issue in the maternal line, shall inherit.¶ The

*For time of making election, see “Dower,” secs. 1, 9.
†By Act of 1823, sec. 39, widow takes the whole.
‡As to advancements, see sec. 23.
§This proviso repealed and another substituted in lieu thereof, by Act of 1813, sec. 35.
||The proviso in italics repealed by Act of 1811, see sec. 34.
¶As to illegitimates, see secs. 27 and 46. See also “Land,” Art. “Lotteries,” &c. sec. 101.

[1.] Where there is a wife and grandchildren, but no children, the grandchildren taken per stirpes and not per capita. 6 Ga. 39. An infant in utero as mere inherits from collaterals. 7 Ga. 535.
next of kin shall be investigated by the following rules of consanguinity, viz: children shall be nearest; parents, brothers and sisters shall be equal in respect to distribution; and cousins shall be next to them.*

Sec. II. So much of the above recited Act as is repugnant to this Act, shall be, and is hereby repealed.

An Act to alter and amend an Act for the more effectually securing the probate of wills, limiting the time for Executors to qualify, and widows to make their election, and for other purposes therein mentioned.—Approved Dec. 10, 1812. Vol. III. 283.

Sec. I. The Courts of Ordinary upon application made by any administrator, administratrix, guardian, or distributees of any estates, shall appoint three or more freeholders of the County in which such application shall be made, whose duty it shall be to divide the said estate subject to distribution into as many parts or shares as there are distributees, and assign, by lot or otherwise, as to them shall seem proper, one of the said parts or shares to each distributee, or his, her or their guardian or legal representative; the said distributee or his, her or their guardian or legal representative, first giving bond and approved security to the said administrator to refund his or her proportionable part of any debt which may be afterwards established against the said estate, and the costs attending the recovery of such debt. Provided, always, the party so applying shall give to all the parties in interest within the State written notice thereof twenty days, and those without the State, ninety† days before the meeting.

*See Act of which this is amendatory, as to rule in case of more distant degrees, sec. 59 of this title.

†Four months by publication, by Act of 1807, sec. 22.
of the Court at which the said application is made. And provided, also, that the persons so making distribution shall be previously sworn to make the same according to justice and equity without favor or affection to any of the parties, to the best of their skill and understanding.*1

Sec. II. [See Art. "Executors," &c. sec. 93.]

An Act to explain and amend an Act entitled "an Act to regulate Escheats in this State, and to appoint Escheators," passed the 5th December, 1801.—This Act approved Dec. 13, 1816. Vol. III. 276.

Whereas, the term heirs, in the said Act contained, has been so construed as to prevent children, born of the body of the same mother, from being capable of inheriting or transmitting inheritance:

27. Be it enacted, &c. That where any woman shall die intestate, leaving children commonly called illegitimate, or natural, born out of wedlock, and no children born in lawful wedlock, all such estates, whereof she shall die seized or possessed, whether real or personal, shall descend to and be equally divided among such illegitimate or natural born children and their representatives, in the same manner as if they had been born in wedlock; and if any such illegitimate or natural born child shall die intestate, without leaving any child or children, his or her estate, as well real as personal, shall descend to, and be equally divided among his or her brothers and sisters, born of the body of the same mother and their representatives, in the same manner and under the same regulations and restrictions as if they had been born in lawful wedlock.†

Sec. II. [Repeals all conflicting laws.]

An Act to be entitled an Act to amend and explain an Act passed the 12th December, 1804, entitled "an Act to amend an Act entitled an Act to carry into effect the sixth section of the fourth article of the Constitution, touching the distribution of Intestates' Estates, directing the manner of granting Letters of Administration, Letters Testamentary, and Marriage Licenses, passed 23d December, 1789," as respects Advancements to Children in the lifetime of the Intestate.—Approved Dec. 25, 1821. Vol. IV. 206.

28. Sec. I. When any person holding real or personal estate shall depart this life intestate, the said estate, real and personal, shall be considered altogether of the same nature, and upon the same footing as to distribution,² which shall take place agreeably to the pro-

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*Slaves may be sold for the purpose of distribution, see Art. " Executors," &c. sec. 79.
²Amended, see Act of 1856, sec. 46. See also " Land," Art. " Lotteries," &c. sec. 101.

(1) Setting apart a share to the husband of a distributee and leaving it with the administrator does not amount to a reduction to possession by the husband. 1 R. 69, 637.
[2.] The administrator and the heirs can either maintain ejectment for land in Georgia.
³Kelly, 105. A sale of land under a judgment de bonis testatoris divests the title of the heirs.

visions of the before recited Act;* but whenever there shall be a
child or children of an intestate who shall have any estate by set-
tlement of the intestate, or shall be advanced by the intestate in his
or her lifetime, by portion or portions, equal to the share which shall
by such distribution be allotted to the other children to whom such
distribution is to be made, he, she or they in that case shall receive
no further distribution of the said intestates' estates.† And whenever
any child shall have an estate by settlement from the said intestate,
or shall be advanced by the intestate in his or her lifetime by portion,
not equal to the share which may be due to the other children by
distribution as now established; then so much of the surplusage of
the estate of such intestate as shall make the estate of all the children
of such intestate to be equal as near as can be estimated; Provided,
such advancements, when brought into hetch-pot, shall be estimated
according to the value of the property at the time such advancement
was made, and no interest allowed thereon.

Sec. II. [Giving to husbands the administration on the estates of
their wives—re-enacted in 1827. See sec. 29.]

Sec. III. [Repeals all conflicting laws.]

An Act declaring and making certain the law regulating the rights
of husbands in and to the property of their deceased wives, and
for other purposes.—Approved Dec. 26, 1827. Vol. IV. 220.

Preamble.

29. Whereas, the Legislature of this State did, on the 25th of
Dec. 1821, pass an Act entitled "an Act to amend and explain an
Act, passed the 12th Dec. 1804, entitled an Act to amend an Act enti-
tled an Act to carry into effect the sixth section of the fourth ar-
ticle of the Constitution touching the distribution of intestates' es-
tates, directing the manner of granting letters of administration, let-
ters testamentary, and marriage licenses, passed 23d Dec. 1789, as
respects advancements to children in the lifetime of the intestate," by
the second section of which Act it is provided, "that in case of a
feme-covert dying intestate, the husband may demand and have
administration of their rights and credits and other real and personal
estates, and recover and enjoy the same without being subject to
distribution;" and whereas, the constitutionality of said second sec-
ton is doubted, by reason of its departure from the title of said bill;
for remedy whereof,

Be it enacted, That in every case where a feme-covert has died
within this State intestate since the said 25th of Dec. 1821, or may
hereafter die intestate, the husband shall and may demand and have
administration of their rights and credits, and of other real and per-
sonal estates, and recover and enjoy the same without being subject

*See Act of 1804, sec. 25.

†See Act of 1804, sec. 25.

An Act to amend the Act of the 23d Dec. 1826, to amend the Act to enable Feme Coverts to convey their estates, and for confirming and making valid all conveyances and acknowledgments herebefore made by Feme Coverts,† passed the 24th of April, 1760, so far as the same relates to Feme Coverts conveying their dower; and also to enable the wife to inherit the whole estate of her deceased husband.—Approved Dec. 21, 1829. Vol. IV. 225.

30. Whereas, it is provided in the second section of the Act of the 23d Dec. 1826, "That whenever it shall so happen that any person shall die intestate and without issue, his wife shall inherit the whole estate, both real and personal, of her deceased husband, after paying his just debts;" and whereas, doubts are entertained of the constitutional validity of said enactment, on account of a want of conformity between the title and the body of the Act:

Be it therefore enacted, That the said recited second section of the Act of 1826 shall be, and it is hereby declared to be in full force and effect after the passage of this Act, so far as the same may affect any case or cases that may hereafter arise.

An Act to alter and amend an Act for the more effectually securing the probate of wills, limiting the time for Executors to qualify, and widows to make their election, and for other purposes therein mentioned; passed December, 10, 1812.—Assented to Dec. 25, 1837. Pam. 93.

31. Sec. I. Be it enacted, That part of the above recited Act requiring administrators, administratrix, guardians, or distributees of any estate, to give personal notice in writing, to be served twenty days on the parties in interest if in the State, and ninety if out of the State, be, and the same is hereby repealed so far as respects notices to parties out of the State.

32. Sec. II. Before any administrator, administratrix or distributee of any estate shall get an order for the distribution of any estate, from any of the Courts of Ordinary in this State, he shall give to all the parties twenty days notice if in this State, and if residing out of the State four months notice, by advertising at least twice a month in one of the newspapers of this State, any law to the contrary notwithstanding.

†For that Act see "Conveyances," sec. 5.

(1.) Upon death of feme covert her separate estate vests in her legal representative. 1. Kelly, 381. A vested remainder vests in the husband as administrator. 4 Ga. 377. Husband entitled to all her choses in action, whether reduced to possession or not. 4 Ga. 541.
An Act for the relief and support of Widows and Orphans, out of the estates of their deceased husbands and parents.—Assented to Dec. 29, 1838. Pam. 201.

33. Sec. I. Be it enacted, That from and after the passage of this Act, when any person shall die, leaving a widow and children, or a widow, or child, it shall and may be lawful for the executor or administrator thereof, to allow out of the effects of such deceased person, a reasonable support and maintenance for the space of twelve months next ensuing, immediately after the death of such testator, or intestate, notwithstanding any debts, dues, or obligations of said testator, or intestate.

Sec. II. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

An Act to repeal part of the first section of an Act passed on the twelfth day of December, eighteen hundred and four, touching the distribution of intestate estates, &c.—Assented to Dec. 11, 1841. Pam. 136.

34. Sec. I. Be it enacted, That from and after the passage of this Act, that the second provision contained in said section, which is in these words: "That on the death of the last child intestate, and without issue, the mother shall take no part of his or her estate, but the same shall go to and be divided in like manner in the next of kin on the father’s side;" shall be, and the same is hereby repealed.

An Act to repeal a part of the first section of the Act passed on the twelfth day of December, eighteen hundred and four, entitled an Act, to amend an Act, entitled an Act, to carry into effect the sixth section of the fourth article of the Constitution, touching the distribution of intestate’s estates, directing the manner of granting letters of administration, letters testamentary, and marriage license; and to insert another proviso in lieu of that repealed.—Assented to Dec. 22, 1843. Pam. 125.

35. Be it enacted, That the proviso contained in the first section of the above recited, in the following words: "Provided, that such mother, after having intermarried, shall not be entitled to any part or proportion of the estate of a child who shall die intestate, and without issue; but the estate of such child shall go to and be vested in the next of kin on the side of the father," be and the same is hereby


(2.) Last child of mother. 6 Ga. 125.
repealed. And that the following be inserted in lieu thereof, to wit: Provided, that such mother, after having intermarried, shall not be entitled to any part or portion of the estate of such child, who shall die intestate and without issue, unless it shall be the last 1 or only child.

An Act to change and point out the mode of inheritance in certain cases therein mentioned.—Approved Dec. 26, 1845. Pam. 34.

36. Sec. I. Be it enacted, That from and after the passage of this Act, whenever any feme covert having a child or children, living, by a former husband, shall be entitled to property by inheritance, such property shall not belong to the husband of such feme covert, as heretofore, but shall be equally divided between all the children of such feme covert and said feme covert.

37. Sec. II. Such property, so divided as aforesaid, the parts or shares so allotted to any child or children by a previous marriage, shall be vested in such child or children, and the part or parts so allotted to such feme covert and to her children by her last husband, shall vest in such husband in the same manner as said property would vest under existing laws.

An Act to explain the tenth section of the Act passed on the 18th day of Dec. 1792, entitled "an Act to protect the Estates of orphans, and to make permanent provision for the poor."—Approved Dec. 27, 1845. Pam. 43.

38. Be it enacted, That in the payment of the debts of any deceased person or persons, no debts secured by mortgage shall be entitled to any priority over any other debt of equal degree, except so far as relates to the property mortgaged.

An Act to more effectually provide for the maintenance and protection of widows and orphans.—Approved Feb. 23, 1850. Pam. 394.

39. Sec. I. Be it enacted, That from and after the passage of this Act, in case any husband shall die leaving a wife and child or a wife and children or an orphan child or children under age, and the whole estate of said deceased shall not be more than sufficient to pay the debts of said deceased, then and in that case the said wife and child, or children, or orphan, shall be permitted to hold and enjoy for their support and maintenance, free from levy and sale for any debt or demand which existed against the husband or father at the time of his death, the sum of one hundred dollars’ worth of such effects as they or their guardians may select for their welfare and comfort.

(1) Last surviving child of mother. 6 Ga. 126.
§100 to widow and children, and support for one year—Mode of valuation.

40. Sec. II. It shall in all such cases be the duty of the Clerk of the Court of Ordinary to make the valuation and set apart the property which is declared to be exempt from levy and sale under the provisions of this Act, and report the same to the Court of Ordinary, whose duty it shall be to order said report to be recorded on the minutes of said Court, and the property contained in said report shall be and it is hereby declared to be vested in said widow and child, or children, or orphan, or orphans, for the purposes herein before specified.

41. Sec. III. Nothing herein contained shall be so construed as to take from widows and orphans any property and rights now allowed them by law.

Sec. IV. All laws and parts of laws militating against this Act, be and the same are hereby repealed.

An Act to allow the widow and children of deceased persons a support out of the estate of the deceased, for the term of twelve months after the decease, in cases where no administration has been granted on the estate of the deceased, and to ascertain the amount necessary for the support, and set apart the same, and to exempt it from levy and sale for the debts of the deceased or by an administration, and to vest the title thereof in the family of the deceased.—Approved Feb. 22, 1850. Pam. 395.

42. Sec. I. Be it enacted, That from and after the passage of this Act, when any persons shall die leaving a widow and children, or a widow and child, and no administration is granted by the proper authority, on the estate of the deceased, the widow and child, or children, or either of them, shall be allowed a reasonable support and maintenance, out of the estate of said deceased, for twelve months after the death of said deceased, notwithstanding any debts, dues, and obligations of said deceased.

43. Sec. II. It shall be the duty of the Justices of the Peace of the several militia districts in this State, on the application of the widow of any person deceased, in their respective districts, or the person having the care of the child, or children of the deceased, to go to the late residence of the deceased, and assess the sum necessary for the support and maintenance of the family of said deceased for the term of twelve months, and to set apart that amount in money, or such property as may be selected by the widow or person having the care of the children of said deceased, if there be no widow, at a fair valuation to be made by the said Justices of the Peace, and the money or property so set apart shall be exempt from levy and sale by virtue of any judgment, and from the control of any administrator of said estate, afterwards appointed to administer the estate of said deceased, and the title thereto shall vest in the family for their support and maintenance.

44. Sec. III. It shall be the duty of the said Justices of the Peace, to return to the next Court of Ordinary in their County, a schedule of
the property so set apart for the support of the family of the deceased, with the valuation as fixed by them, together with the amount necessary for the support of the family, as determined by them, and the said Court of Ordinary shall order the same to be entered of record by their Clerk in a book to be kept by him for that purpose.

45. Sec. IV. The said Justices of the Peace shall be paid by the applicant the sum of one dollar each for their services, and the Clerk of the Court of Ordinary the same fee for recording the same as he is allowed for recording by law.

Sec. V. All laws and parts of laws militating against this Act be, and the same are hereby repealed.

An Act to alter and amend "an Act to explain an Act to regulate Escheats in this State, and to appoint Escheators, passed the 13th day of December, in the year 1816," so far as to allow bastards or natural born children of widows, to inherit from their mother, under certain circumstances therein specified.—Approved Feb. 11, 1850. Pam. 172.

46. Sec. I. Be it enacted, That from and immediately after the passage of this Act, all bastards or natural born children of widows, when said widows shall die intestate, shall inherit the real and personal estate of their deceased mothers, acquired and accumulated during widowhood, equally with the child or children of said widows, born in lawful wedlock, any law, usage or custom to the contrary notwithstanding.

ART. III. EXECUTORS, ADMINISTRATORS, AND GUARDIANS; APPOINTMENT AND DISMISSION; BONDS; DUTIES AND POWERS; SALES BY, AND CLAIMS.*

* As to the manner and cases in which made parties, see "Judiciary," sec. 71, 77.

"Attachment," &c. secs. 8, 51, 55.


For remedy of Executor or Administrator of deceased Sheriff against deputy, see "Judiciary," sec. 368.

Promises to pay intestates' &c. debt, must be in writing; see "Statute of Frauds," Appendix.

For Act protecting estates from double tax, see "Tax," sec. 108.

As to Notice to Creditors and suits by them, see this title, Article "Distribution," sec. 1.

As to power and place of appointment, see this title, Article "Court of Ordinary." passim.

As to distribution generally, see that title.

As to Guardians of Idiots and Lunatics, see that title.

No administration on the estate of an Indian, see "Indians."

Suits against, with surviving co-obligor, see "Judiciary," sec. 101.

As eject against persons running off property, see "Judiciary," sec. 226.

For Act authorizing suit for injury, causing death of testator or intestate, see "Judiciary," subdivision, "Action, Commencement, &c." sec. 83.
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An Act to direct Executors and Administrators, in the manner and method of returning Inventories and accounts of their Testators' and Intestates' Estates, and for allowing them and all other persons who shall or may be intrusted with the care and management of Minors' and other estates, to charge commissions thereon.—Approved Feb. 29, 1764. Vol. I. 213.

47. Whereas, for preventing any fraudulent disposition or embezzlement of the estates of persons deceased, it is highly expedient that executors and administrators should be obliged to render true and perfect inventories and appraisements of the estates and effects of their testators and intestates, come to their hands and possession: And whereas, it is also fit and reasonable, that as well executors and administrators, as all guardians and trustees, shall have an allowance for their trouble and care in the management of the estates committed to their trust:

Sec. 1. Be it enacted, That from and after the passing of this Act, all and every executor and administrator, who shall before the Ordinary* of this province, for the time being, or such person as he shall depute or appoint,† qualify him, her, or themselves, for the administration of the estate and effects of his, her, or their testator or intestate, shall, upon oath, be bound to produce and show to the appraisers that shall be appointed by the Ordinary for that purpose, or any three or more of them, all and singular the goods and chattels of his, her, or their testator or intestate, as have or shall come into his, her, or their, or either of their hands, possession, or knowledge; and within sixty days after such his, her, or their qualification, shall cause to be made a true and just appraisement, upon oath;‡ of all and singular the goods and chattels aforesaid, and exhibit, or cause to be exhibited the said appraisement, certified under the hands of any three or more of the appraisers aforesaid, within four§ months after such his, her, or their qualification, together with a full and perfect inventory of all and singular the rights and credits of the said testator or intestate, whether the same be in ready money, judgments, bonds, or other specialties, or notes of hand, together with a list or schedule of the books of account,1 of such testator, to which books all parties concerned shall, upon request, and at convenient times, have free access: and every such executor and administrator shall be, and they are hereby made chargeable with the real value of the goods and chattels in the said inventory contained, and with so much of the credits

*The Ordinary here mentioned was in the place of bishops or other ecclesiastical judges, [see Statute 22 and 23, Ch. II. chap. 16.] who under the British government had cognizance of these matters, as well in this province as in England. Under the Constitution of 1777 [Vol. I. 12.] this jurisdiction was given to the register of probates; and by the Act of 1799 [see Art. 1.] to the Inferior Court, who have since discharged the duties which in England appertain to the Court of the Ordinary.

†But see Act of 1749, sec. VII. and note thereto, sec. 67 of this title.

‡For oath, see sec. VI. this Act, sec. 62.

§For three months, by Act of 1792, sec. 62.

only as he, she, or they, after due care and proper diligence, shall recover and receive, in like manner as executors and administrators are made chargeable by the Common and Statute Law of England.1

48. [The oaths of executors and administrators are afterwards prescribed more concisely in the Act of 1792, and this section is therefore omitted. The oath to be taken for the execution of a will, whether by an executor named therein, or by an administrator with the will annexed, will be found in sec. 65; and the oath of administrators, where there is no will, in sec. 67. It may, however, not be improper to call the attention of executors and administrators to the following passages containing a succinct outline of their duties; although they are not now to be sworn to the performance of them:—

"And that you will produce to, show, and inform the appraisers, that shall be appointed by the Ordinary, all and singular the goods and chattels of the deceased as already have, or shall before the day of making the appraisement, come to your hands, possession, or knowledge."

And directing them to make a true and perfect inventory, "whether the same be in ready money, judgments, bonds, or other specialties, or notes of hand, together with a list or schedule of the books of account of such testator and intestate person, and exhibit, or cause to be exhibited the said inventory and schedule, together with the appraisement of the said deceased's goods and chattels, certified under the hands of three or more of the appraisers aforesaid."

And whereas, a custom hath prevailed among executors and administrators of taking estates, or some part thereof, at the appraisement, when such appraisement hath often been under the real value; for prevention whereof for the future,

49. Sec. III. Be it enacted, &c. That no executor or administrator shall hereafter be permitted to take any estate, or any part thereof, at the appraisement, and that no appraisement to be made as aforesaid shall be binding or conclusive, either upon the creditors, legatees, next of kin, or other person interested in such estate, or upon the executors or administrators, but all and every such executor and administrator shall be chargeable and accountable for the true value of such estate, any practice to the contrary notwithstanding.

50. Sec. IV. All intended sales of goods and chattels, belonging to testators or intestates, shall be published in two or more public places in the parish [county] where such effects are to be sold, and in the gazette, at least forty days before the day of such intended sale.†

51. Sec. V. In case any person in the province shall hereafter happen by his will to appoint his debtor to be his executor, such appointment shall not, in Law or Equity, be construed or deemed to be a release or extinguishment of any debt due to the testator, unless the testator shall in his will expressly declare his intention to devise,

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1. Re-enacted, 1792, sec. 62.
2. Hours of sale, Act of 1804, sec. 78. To the best advantage, 1805, sec. 80.

(1). See 8 Ca. 396.
(2). Slaves are not included in this section. 1 Kelly 347.
bequeath, or release such debt, any law, usage, or custom to the contrary notwithstanding.

52. Sec. VI. No appraisers that shall hereafter be appointed to appraise any testator's or intestate's goods and chattels, shall enter upon the same until they shall have taken the following oath before one of his Majesty's Justices of the Peace of this province, who is hereby empowered to administer the same: "You, A, B, C, D, E, F, do swear, that you will make a just and true appraisement of all and singular the goods and chattels (ready money only excepted,) of G, deceased, as shall be produced by I, the executor or administrator of the estate of the said G, deceased, and that you will return the same, certified under your hands, unto the said I, executor or administrator, within the time prescribed by law."

Sec. VII. [Directing administrators to give bond—re-enacted, see sec. 68.]

53. Sec. VIII. No letters of administration shall hereafter be granted by the Ordinary of this province to any person or persons whomsoever, as principal creditor or creditors to any intestate, but upon special trust and confidence, and for the benefit of all and singular the rest of the creditors; and that all debts* of an equal nature shall be discharged by such administrator or administrators in average and proportion, as far as the assets of the intestate shall extend, and that no preference shall be given amongst the creditors in equal degree; and that every such administrator and administrators shall be obliged to sue for such debts which he or they may reasonably expect to recover, or at the request and proper charges of any of the creditors of the intestate, assign and empower them, or any of them, to sue for the debts outstanding to the estate of such intestate, any law, usage, or custom to the contrary notwithstanding.

And, that no creditor or creditors, to be appointed administrator or administrators in trust, as hereinbefore mentioned, may retain, in his or their hands, the moneys he or they shall receive by virtue of such administration, longer than necessary,

54. Sec. IX. Be it enacted, that every such administrator or administrators, shall within twelve months after the death of his or their intestate, or after his or their obtaining administration thereon, make a dividend of the moneys arising from such intestate's estate, and effects, to and among the several creditors in like proportion as aforementioned: and in case such estate and effects shall not then be wholly divided, a second dividend thereof shall be made within two years from the death of the intestate, which second dividend shall be final, unless any suit shall be then depending, or any part of the intestate's estate standing out, or unless some future estate of the intestate shall afterwards come to the hands of such administrator or administrators, in which case he or they shall, as soon as may be, convert such future estate into money, and shall within three months after, divide the same, to which effect it shall be inserted in the con-

*For order of payment, see this title, Article "Distribution," sec. 23.
†See sec. 24, as to debts due as Guardian, Administrator, &c. see also section 23.
dition of the bond to be given as aforementioned, on obtaining letters of administration.*

55. Sec. X. Every executor and administrator who shall not within the time aforesaid, or within such further or other reasonable time as the Ordinary shall think fit to give, make and return into the Secretary's office aforesaid such inventory and appraisement as is hereinbefore directed to be made and returned, and who shall make default in mentioning or inserting therein all or any of the credits or effects of his, her, or their testator, or intestate as aforesaid, which shall come into their hands to be administered, every such executor or administrator shall be, and they, and each of them, are hereby made chargeable with and subject to the payment of all and singular the said testator's and intestate's debts, legacies, and bequests, in the same manner as executors of their own wrong are subjected and made chargeable by the Common or Statute Law of England.†

56. Sec. XI. It shall and may be lawful to and for all and every executor and administrator, guardian and trustee, for his, her and their care, trouble and attendance, in the execution of their or either of their several duties and trusts, to take, receive, or retain, in his or their hands, a sum not exceeding fifty shillings for every hundred pounds, which he, she or they, shall hereafter receive, except upon the appraised value of any estate that shall come into their hands; and the like sum of fifty shillings for every hundred pounds which he, she, or they, shall pay away in debts, legacies, or otherwise, (excepting also the delivering up any such estate to the person or persons entitled to the same, during the course and continuation of their, or either of their management or administration,) and so in proportion for any sum less than one hundred pounds;§ Provided nevertheless, that no executors or administrators, guardian or trustee, shall, where they have power so to do, for his, her, or their trouble, in letting out and lending any sum or sums of money upon interest, and again receiving the moneys so lent and let out, be entitled to receive, take or retain, any sum exceeding the sum of twenty shillings for every ten pounds for all sums arising by moneys lent to interest, so to be by them received, and in like proportion for a larger or lesser sum: and provided also, that no executor, administrator, guardian, or trustee, who is or may be creditors of any testator or intestate, or to whom is or may be left or bequeathed any sum or sums of money, or other estate or effects, shall be entitled to any reward or commissions for the payment or retaining to themselves any such debts or legacies, any law, usage, or custom, to the contrary notwithstanding.

But, as it may be very difficult to ascertain the proper and adequate allowance to be made in all cases, and as the sums herein before allowed may not be sufficient compensation for the care, trouble and pains which executors, administrators, guardians, or trustees may

*Distribution among heirs, &c. by order of Court, see this title, Art. 26.
†Now Clerk of the Court of Ordinary.
‡May be dismissed, sec subsequent Acts.
§Additional compensation under certain circumstances, see next section; also Act of 1847, section 157.
take in the management of their respective trusts, in some particular cases—

57. Sec. XII. Be it enacted, &c. That if any executors, administrators, guardians, or trustees who shall have had extraordinary trouble in the management of the estates under their care, and shall not be satisfied with the sums herein before mentioned, such executors, administrators, guardians, or trustees shall and may be at liberty to bring an action in the General Court of Pleas for their services, and the verdict of the Jury and judgment of the Court thereupon shall be final and conclusive in such cases; Provided, always, that no verdict shall be given for more than fifty shillings per cent. over and above the sums allowed by this Act.※

58. Sec. XIII. The commissions given by this Act shall be divided among executors, administrators, guardians and trustees, according to the proportion of the services by them respectively performed, to be rated and settled by the Chief Justice and two of the Justices of the General Court of Pleas, in case the executors, administrators, guardians and trustees cannot agree among themselves concerning the same.

Sec. XIV. This Act shall be and continue in force for the term of seven years, and from thence to the end of the next session of Assembly, and no longer.†

An Act to carry into effect the sixth section of the fourth article of the Constitution touching the distribution of Intestates' Estates, directing the manner of granting letters of administration, letters testamentary, and marriage licenses.—Approved Dec. 23, 1789. Vol. I. 216.

Sec. I. [Rules of descent—Re-enacted with amendments in 1804. See sec. 25.]

59. Sec. II. The same rules shall obtain in regard to the granting letters of administration on intestates' estates, as are before mentioned for the distribution thereof:‡ and should any case arise, which is not expressly provided for by this Act, respecting intestates' estates, the same shall be referred to and determined by the Common Law of this land, as it hath stood since the first settlement of this State,§ except only that real and personal estate shall always be considered in respect to such distribution as being precisely on the same footing; and in cases of intermarriage, since the 23d day of February, 1785, the real estate belonging to the wife shall become vested in her and pass to the husband in the same manner as personal property doth; and in cases of the death of the husband thereafter, intestate and

※See Act of 1817 on this subject, sec. 157.
†Continued by Acts of 1773 and 1777, and finally perpetuated by Act of 1784, "Laws," 3. See also Act of 1792 of this title, sec. XIII.
‡Citizens of Georgia only to be appointed, sec. 7. Creditor may be appointed in certain cases, sec. 63.
§For a concise view of the rule of distribution under the Common Law, see "Bridgman's Analytical Index," Vol. I. 775.
An Act to be entitled an Act to protect the estates of Orphans, and to make permanent provision for the Poor.—Approved December 18, 1792. Vol. I. 220.

Whereas, there is no law in this State which sufficiently points out the manner in which the estates of deceased persons shall be ascertained, and the duty of executors and administrators prescribed, whereby orphans and others are injured in their just rights: for remedy whereof,

61. Sec. I. Be it enacted, &c. That every executor and administrator shall annually, whilst the estate shall remain in his or their care or custody, on the first day of January, or within ten days thereafter, render to the Register of Probates in the County in which they obtained probates of will or letters of administration a just and true account, upon oath, of the receipts and expenditures of such estates the preceding year, which, when examined and approved, shall be deposited with the inventory and appraisement, or other papers belonging to such estate in said office, there to be kept for the inspection of such persons as may be interested in the said estate; and that no charge shall be made for such search and inspection by persons interested; and if any executor or administrator shall neglect to render such annual accounts, he shall not be entitled to any commissions for his trouble in the management of the said estate; and

*The Act of February 18, 1790, says "at the first term" in every year, sec. 75. The Act of Dec. 15, 1810, says "once in each and every year," sec. 91. But by Act of 1850, "by the first Monday in July," sec. 168. In 1841, (Pam. 129,) an Act was passed requiring executors, administrators, and guardians to include in each annual return all notes taken since their last return, which Act was repealed in 1842, (Pam. 86.) Both Acts are omitted.

†But see Act of 1850, sec. 168.

(1.) See Echols and Wife vs. Barrett, deciding that the appointment of one of the Court of Ordinary while he is presiding is void. 6 Ga. App. 419.

(2.) Such return prima facie evidence only for the administrator, &c. 5 Ga. 29. Failure to make returns casts suspicion on a settlement. 6 Ga. 419.

(3.) No commissions allowed where annual returns have not been made. 6 Ga. 265, 8 Ga. 419. See Act of 1850, sec. 168.
shall moreover be liable to be sued for damages by any person or persons interested in the said estate. [Here follows a passage directing executors and administrators already appointed, to render an account within twelve months—temporary.] And in cases where any person shall die intestate and appoint an executor or executors to his will, against which executor or executors there shall be any charge of neglect or malpractice by any devisee, legatee, or creditor, that the Superior Court shall hear and determine such charge and complaints, and if the Judge of such Court shall determine in favor of the application, then and in such case the Judge of the Court shall order and direct that the executor so complained of shall give security, in the discretion of the Court, for the faithful execution of the trust.*

62. Sec. II. When any will shall be proved, or application is made for administration of the estate of any person dying intestate, the Register shall direct the executors or administrators to make out an exact inventory of the personal estate of the deceased, and shall appoint three or more reputable freeholders, who shall appraise the same on oath, which inventory and appraisement shall be returned within three months into the Register's [now Clerk's of Ordinary] office; and every appraisement made as aforesaid may be given in evidence in any action against such executors or administrators to prove the value of the estate, but shall not be conclusive if it shall appear on the trial of the cause that the estate was really worth or bona fide sold for more or less than such appraisement.†

63. Sec. III. When any person shall make a will in writing without appointing any executor or administrator therein, or such executor or executors shall refuse to qualify,‡ the Register of Probates of the County wherein such will shall be proved, shall, on application, grant letters of administration, with the will annexed, to such person or persons as would have been entitled thereto, if the deceased had died intestate. And if any person shall die intestate, the Register of the County wherein the will of such person (had he or she left one) would have been proved, shall grant letters of administration to them who would have been entitled thereto.

64. Sec. IV. If any person having in possession the will of a deceased person, shall neglect to produce the same to be proved, upon application to the Superior Court of the County where such will is to be proved, process as for contempt shall issue, and the person shall be fined and imprisoned until the will shall be delivered.

65. Sec. V. Every executor or administrator, with the will annexed, at the time of proving the will or granting administration shall take the following oath:§ "I do solemnly swear that this writing contains the true last will of the within named A B, deceased, so far

*See Act of 1805, sec. 81, giving jurisdiction to the Court of Ordinary for same purpose. See sec. 91 and note.
†See sec. III, Act of 1764, sec. 49 of this title.
‡As to the time in which executors must qualify, see secs. 88, 89.
§My Act of 1829, a administrator, executors and administrators shall be qualified, and give bond in writing, see sec. 135.

11 1 Sec. 9, 89, 396.
as I know or believe; and that I will well and truly execute the same, by paying first the debts, and then the legacies contained in the said will, as far as his goods and chattels will thereunto extend, and the law charge me; and that I will make a true and perfect inventory of all such goods and chattels, so help me God."

66. Sec. VI. And the administrator with the will annexed, shall enter into bond,* with good and sufficient security, in a sum equal to the value of the estate at least, the condition of which bond shall be in the form following,† to wit: "The condition of this obligation is such that if the above bound C D, administrator, (with the will annexed,) of the goods, chattels, and credits of E F, deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands or possession or knowledge of the said C D, or into the possession of any other person for him; and the same so made, do exhibit to the Superior Court of the County, or to the Register of Probates thereof, at such time as he shall be thereunto required by the said Court or Register, and the same goods, chattels and credits do well and truly administer according to law, and make a just and true account of his actions and doings when by law required; and further do well and truly pay and deliver all the legacies contained and specified in the said will, as far as the said goods, chattels and credits will extend or the law require, then this obligation to be void, else to remain in full force." Which bond shall be made payable to the Register of Probates‡ for the County and his successors in office, and recorded in the Clerk’s office of the Superior Court, and may be sued for from time to time§ by any person injured by the breach thereof, until the whole penalty be recovered, and damage sustained being assessed on such suit by the verdict of a Jury may be levied by execution, and paid to the party for whom they were assessed.

67. Sec. VII. Every administrator, when letters are granted to him, shall take the following oath or affirmation, as the case may be, before the Register of Probates:§§ "I do solemnly swear, or affirm, that A B, deceased, died without any will, as far as I know or believe, and that I will well and truly administer on all and singular the goods and chattels, rights and credits of the said deceased, and pay all his just debts, as far as the same will extend, and the law requires me; and that I will make a true and perfect inventory of all and singular the goods and chattels, rights and credits, and a just return thereof when thereunto required, so help me God."

68. Sec. VIII. And such administrator shall also enter into bond

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* By Act of 1830, administrators, executors and guardians may be qualified, and give bond in vacature, sec. 165.
† Formal variance does not vitiate, Act of 1841, sec. 129.
‡ Superior Court sitting as a Court of Ordinary. Various forms of bonds declared valid, secs. 164, 138.
§ The principal and security in any executor’s, administrator’s or guardian’s bond made since 15th Dec. 1826, may be sued in the same action; "Judiciary," sec. 101.

(1.) This oath, prior to Act of 1830, should be taken before the Court of Ordinary. 6 Ga. 243.
Administrator's bond—Relief of surety—Marriage of Administratrix—Executors de son tort.

with good security, to be appointed by the Register,* in a sum equal to the full value of the estate, with a condition following,† to wit: "The condition of the above obligation is such, that if the above bound A B, administrator of the goods, chattels and credits of C D, deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession, or knowledge of the said A B, or into the hands or possession of any other person or persons for him: and the same so made, do exhibit into the said Court of ——, when he shall be thereunto required; and such goods, chattels and credits do well and truly administer according to law, and do make a just and true account of his actuings and doings thereon, when required by the Superior Court or Register of Probates for the County. And all the rest of the goods, chattels and credits, which shall be found remaining upon the account of the said administration, the same being first allowed by the said Court, shall deliver and pay to such persons respectively, as are entitled to the same by law, and if it shall hereafter appear that any last will and testament was made by the said deceased, and the same be proved before the Court, and the executors obtain a certificate of the probate thereof, and the said A B do in such case, if required, render and deliver up the said letters of administration, then this obligation to be void, else remain in full force." Which bond shall be made payable to the Register of Probates for the County in which the same shall be given, and to his successors in office, and recorded in the Clerk’s office of the Superior Court;‡ and may be sued in like manner as is prescribed in the preceding clause of this Act, in the case of bonds given by executors with the will annexed; and in case the Register shall fail to take bond with sufficient security as aforesaid, such Register shall be liable to be sued for all the damages arising from such neglect, by any person or persons interested in the estate. If the sureties for administrators conceive themselves in danger of being injured by such suretyship, they may petition the Superior Court of the County wherein they stand bound for relief: which Court shall summon the administrator to appear, and thereupon make such order or decree as shall be sufficient to give relief to the petitioner.§

69. Sec. IX. [If any widow, after having obtained letters of administration, shall marry again, it shall be in the discretion of the Judge of the Superior Court, to revoke the administration to her granted, or join one or more of the next of kin to the intestate in the administration with her.]]

Sec. X. [See Art. Distribution, sec. 23.]

70. Sec. XI. All and every the executors and administrators of any person or persons, who as executor or executors in his or their own wrong, or administrators, shall waste or convert any goods, chattels,

*May give bond in vacation, see sec. 165.
†Formal variance does not vitiate, Act of 1841, sec. 139.
‡In the office of C. C. O., see Act 1829, sec. 120.
§Query; whether this jurisdiction is ousted by the subsequent Statutes giving the like power to the Court of Ordinary, secs. 81, 91.
||See Act 1828, sec. 118, repealing this provision; it is retained, however, as explanatory of the last.
Titles to land—Vendor dying.

estate, or assets of any person deceased, to their own use, shall be liable and chargeable in the same manner as their testator or intestate would have been if they had been living.*

Sec. XII. [Authorizing the sale of real estates; re-enacted in 1811, and again in 1816, see secs. 97, 105.]

Sec. XIII. [Declaring the Acts of 1764, (sec. 58,) and the Act of 1789, (sec. 59,) to be in force where they apply and are not repugnant to this Act.]

Sec. XIV. [See Article "Poor," sec. 191.]

An Act to authorize and empower Executors and Administrators to make titles to land in certain cases.—Approved Feb. 15, 1799.

Vol. I. 218.

71. Sec. I. Where it shall clearly and indisputably appear, that any person or persons hath, or have entered into any bond, obligation, or other agreement in writing, whereby they were bound to make titles to any lands, tenements, or hereditaments, and shall die without having performed the same† or making provision therefor by will, the person or persons to whom such bond, obligation, or other agreement in writing as aforesaid was given, shall petition the Court of Ordinary of the County in which the executors or administrators reside, and annex a copy of such bond, obligation, or other agreement thereto, praying the Court to direct the executors of such testator, or administrator of such intestate, to make titles for the lands, tenements, or hereditaments, expressed in the said bond, obligation or other agreement; whereupon the said Court shall give at least three months' notice, in one of the public gazettes, and in the public places of the County, of such application; and that the executors or administrators will be directed, at the Court to be held at the next term, to make titles agreeably to such bond, obligation, or agreement; and if no objection shall be made thereto during the said next term, it shall and may be lawful for the executors of such testator, or the administrators of such intestate, on application made to him or them for that purpose, and upon its being made known to his, her, or their satisfaction, that the contract hath been carried fairly into effect, on the part of the person or persons to whom such bond, obligation, or other agreement in writing was made, or their legal representatives, and the amount of the purchase money, or the consideration for which the said contract was entered into shall be fully paid or performed, with the concurrence of the Court of Ordinary of the County in which the intestate died or resided at the time of his or her decease,‡ to make and execute titles in fee simple for such lands or tenements, and fully and completely perform the contract and agreement of the deceased, as perfectly and effectually, to all intents and purposes, as the party having made the said contract might or could

*If they die chargeable, first debt to be paid, see this title, Art. "Distribution" sec. 24.
†See sec. 84, where both parties die, and sec. 83, where the vendee is dead. See also "Judiciary," sec. 203, as to proceedings by administrator to sell land where bond is given.
‡This latter provision repealed by Act of 1850, sec. 171.
have done when in life, any law to the contrary notwithstanding: Provided always notwithstanding, and be it further enacted, that if any of the heirs or legal representatives of the deceased shall oppose or dissent to the making of such titles by the executor or administrator, such executor or administrator shall withhold and forbear to make such title or titles, until a suit shall be instituted against him or them, and a verdict of a Jury, or judgment of the Court, shall pass against him for that purpose.

72. Sec. II. It shall be the duty of such executor or executors, administrator or administrators, in all cases where titles to lands are made in virtue of this Act, to make a fair statement thereof, describing the boundaries and situation of the land, and return the same, together with the bond, obligation, or other agreement in writing, which may have been taken up upon making such titles, to the Court of Ordinary, to be filed in the Clerk's office of that Court, subject to the inspection of all persons interested.


73. Sec. II. All applications for letters of administration shall be made to the Clerk of such Court of Ordinary, who shall give notice thereof in one of the public gazettes of this State, and by advertisement at the Court house of such County, at least thirty days before the sitting of the said Court of Ordinary; and such Clerk may at his discretion grant letters to collect and take care of the effects of the deceased, until the meeting of such Court; and the said Court shall also grant such letters in all cases where there shall be an appeal from the determination thereof to the Superior Court, and in either case, the person obtaining such temporary letters of administration, shall give bond and security for the faithful performance of the trust reposed in such person or persons.

Secs. I, III, IV and VI. [See Article Court of Ordinary, sec. 1, et seq.]

Sec. V. [As to entails, see “Conveyances,” sec. 20.]


74. Sec. I. From and after the passing of this Act, it shall be the duty of the Clerks of the Courts of Ordinary, in the respective Counties, to enter into a book to be kept for that purpose, the names of all ex'rs, adm'rs, &c.—

*Same provision as to guardians, see Act of 1850, sec. 161.
†See Constitution, Art. 3, sec. 6.
‡ See Article “Court of Ordinary,” sec. 6.

[1] Upon letters being granted they revert back to the death of intestate. 1 Kelly, 381.
of all the executors, administrators, and guardians, which may have been, or shall in future be appointed in the several Counties, together with the names of their securities, which book shall at all times be subject to the examination of the Inferior Court, and of such other person or persons as may be interested therein.

75. Sec. II. All guardians, executors, and administrators, here- tofore appointed, and which shall hereafter be appointed, shall at the next Inferior Court, after the expiration of nine months, in the respective Counties, after the passing of this Act, exhibit an account on oath of all the estate of such orphan or deceased person, which he or they shall have received, to be entered by the Clerk of the Court of Ordinary, in a book to be kept for that purpose, Waste of such estates by guardians and adm'rs, how prevented.

Process to issue against those who do not make their returns.

The Court may inquire into abuses and correct them.

Provido.

Guardians to be allowed reasonable disbursements and expenses.

*See secs. 91, 92, (Act of 1810.)
†See secs. 81, 82, (Act of 1805.)
‡"By the first Monday in July," by Act of 1850. sec. 168.
§As to the mode of serving Rules against them, see Acts 20th and 22d Dec. 1828, sec. 115, 119.

[1.] See 8 Ga. 407.
Poor orphans—Hours of sale—Sale of slaves.

appear to the said Court that the annual profits of the estate of any orphan is not sufficient for the education and maintenance of such orphan, it shall be the duty of such Court forthwith to bind out the said orphan for the whole or such part of the time of such orphan’s minority as to them shall seem best; and the person to whom such orphan shall be bound, shall undertake to clothe and maintain such apprentice in such manner as the said Court may direct, and shall cause such apprentice to be taught to read and write the English language, and the usual rules of arithmetic. And in all cases where it shall appear to the Court, that any person to whom any orphan shall be bound in manner aforesaid, shall misuse or ill-treat such orphan, or shall fail to comply with the condition on which such orphan was bound, it shall be the duty of the said Court, on due notice and proof thereof, to take the said orphan out of the possession of such person, and bind him or her to some other person.

Sec. V. [See article Distribution, sec. 24.]

An Act to regulate sales made by Executors and Administrators.—Approved Dec. 12, 1804. Vol. II. 207.

78. Immediately from and after the passing of this Act, no sale made by executors or administrators shall commence before the hour of ten o’clock in the forenoon, or be continued after the hour of four o’clock in the afternoon; nor shall any such sale be continued from day to day, unless the advertisement shall be so expressed, and the same be publicly made known by the hour of four o’clock in the afternoon of the day on which the said sale shall commence.

An Act to alter and amend an Act, entitled an Act to carry into effect the sixth section of the third article of the Constitution, and to amend an Act, entitled an Act to carry into effect, &c. [Act of 16th Feb. 1799, see sec. 73.]-Approved Dec. 6, 1805. Vol. II. 259.

Sec. I. [Fixing the terms of the Court of Ordinary—re-enacted with amendments, sec. 8.]

79. Sec. II. No administrator shall be allowed to sell any slave or slaves belonging to the estate of his intestate; but where the other personal estate, together with the hire of such slave or slaves for twelve months, shall be insufficient to discharge the debts due by the estate, or where one or more slaves shall be subject to distribution, and an equal division thereof cannot be made in kind, it shall be lawful for the Court of Ordinary, by which administration was granted, to direct the sale of such slave or slaves: Provided always, that each distributree, or his, her, or their guardian shall receive twenty days’ notice, in writing, previous to the granting of such order, to show cause, if any he or they can, against such sale.*

*See Act of 1826, sec. 125, as to sales of slaves.
80. Sec. III. From and after the passing of this Act, it shall be the duty of all administrators, of sales to be made by them, to put up the property to be sold in such manner and quantity as shall be deemed most advantageous to said estate.*

Sec. IV. [Directing the division of estates by order of Court—re-enacted with amendments in 1812. See sec. 26.]

81. Sec. V. Whenever securities for executors, administrators, or guardians,† conceive themselves in danger of suffering thereby, and petition the Court of Ordinary for relief, the said Court shall cause the executor, administrator, or guardian, to be summoned to appear before them at the next sitting thereof, and shall make such order, and give such relief in the case, by counter security or otherwise, as to the said Court shall seem just and equitable.1

82. Sec. VI. When it shall be made to appear to the satisfaction of the Court of Ordinary, that any executor or executors of an estate are in insolvent circumstances, and that the estate is likely to be wasted by the improper conduct of such executor or executors, it shall be the duty of said Court, by order, to compel such executor or executors to give bond, with approved security, for the faithful execution of the trust reposed in him, her, or them, by the said will; and in case of failure to comply with such order, to grant letters of administration, with the will annexed,‡ to such person as would be entitled thereto if no such executor had been appointed.2

83. Sec. VII. Where there has been a contract or contracts in writing for the sale of land, and the party to whom titles are to be made dies before such titles are executed, it shall and may be lawful for the Court of Ordinary to order the title or titles to be made to the heirs general of the party deceased.

84. Sec. VIII. Where any person or persons shall depart this life after having entered into any written agreement for the conveyance of any real estate, and the obligee shall also have departed this life, the executors of the obligor shall in like manner make and execute a conveyance or conveyances to the heirs of the obligee.

Sec. IX. [Certificate of marriage, see Court of Ordinary, sec. 5.] Sec. X. This Act shall not affect or operate on any administration heretofore granted.

An Act for the more effectually securing the probate of wills, limiting the time for executors to qualify, and widows to make their election.—Approved Dec. 10, 1807. Vol. II. 381.

Whereas, there is no law in this State which sufficiently enforces witnesses to wills to prove the same, whereby the wise and benevo-

*For remedy where purchaser does not comply with terms, see "Judiciary," sec. 188.
†See further as to their protection, Act of 1810, sec. 91, 92, and note thereto.
‡See Act of 1810, as to its effect upon pending suits, sec. 92.

[1.] Discharged only from future liability—new sureties bound for past and future wastes. 1 Kelly, 84, 88, 858.
[2.] The revocation a good plea for the executor, puis darreins continuance. 2 Kelly, 428.