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I. CONSTITUTION OF THE UNITED STATES.

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CONSTITUTION OF THE UNITED STATES,

AS PUBLISHED UNDER THE INSPECTION OF THE SECRETARY OF STATE IN PURSUANCE OF AN ORDER OF THE HOUSE OF REPRESENTATIVES.

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

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“22. Disqualification.
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“24. Passing bills; Veto.
Sec. 45. Atttainer: Ex post facto, &c.

Sec. 46. Direct tax.

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Sec. 27. Loans.

SECTION I.

2. All Legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

3. The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

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

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

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

7. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

8. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote.

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

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

11. The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

12. The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States.

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

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

SECTION IV.

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

16. The Congress shall assemble at least once in every year, and
Congress assemble annually. such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION V.

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

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

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

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

SECTION VI.

21. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

22. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION VII.

23. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

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

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

SECTION VIII.

The Congress shall have power—

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

27. To borrow money on the credit of the United States:

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

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

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

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

32. To establish post-offices and post-roads:

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

34. To constitute tribunals inferior to the Supreme Court; (19.) to define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

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

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

37. To provide and maintain a navy:

38. To make rules for the government and regulation of the land military law and naval forces:

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

40. To provide for organizing, arming, and disciplining the militia.

(1.) Query. Have the State Courts any jurisdiction over offences against the coin of the United States? 1 Gz, Rep. 133.
Slave trade—Habeas Corpus—Attiinder—Tax—Titles—Restriction on States.

Exclusive jurisdiction.

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

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

SECTION IX.

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

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

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

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

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

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

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

SECTION X.

50. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

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

ARTICLE II.

Sec. 52. President.
"  53. Mode of election.
"  54. Qualification.
"  55. Time of election.
"  57. Vice President—when to act.
"  59. President's compensation.

Sec. 59. His oath.
"  60. His powers.
"  61. Treaties—nomination.
"  62. Filling vacancies.
"  63. His duties.
"  64. Impeachment.

SECTION I.

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

53. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

54. *[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed, and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and, if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But, in choosing the President, the vote shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a

*This clause, in brackets, is superseded by the amendment; see sec. 94.
Qualification of President—Compensation—Oath—Powers.

member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-president.]

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

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

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

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

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

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

SECTION II.

60. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States: He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

61. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein

*Extended to Vice Presidents; see sec. 96.
otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the Courts of Law, or in the heads of departments.

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

SECTION III.

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

SECTION IV.

64. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Sec. 65. Courts and Judges. Sec. 66. Jurisdiction. Sec. 67. Of Supreme Court.

| Sec. 68. Trial by Jury. | Sec. 69. Treason. | Sec. 70. Attainder. |

SECTION I.

65. The Judicial power of the United States shall be vested in one Supreme Court, and such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

66. The Judicial power shall extend to all cases in Law and Equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers, and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign states, citizens or subjects.
APPENDIX.—Constitution U. S.—1787.


Whether original or appcl. to.

67. In all cases affecting Ambassadors or other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Trials by Jury.

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

SECTION III.

Treason.

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

Attainder.

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

ARTICLE IV.

Sec. 71. Acts and records of States.  
Sec. 75. New States admitted.

" 72. Citizens of different States.  
" 73. Territories of United States.

" 74. Fugitives from service.  
" 77. Republican Government.

SECTION I.

Acts and records of the States.

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

SECTION II.

Citizens' privileges.

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

Fugitives from justice.

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

From service.

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

[1.] This clause considered. 3 Kent, 129. See also, 5 Ga. Rep. 273, 219. 8 Ga, Rep. 201.
APPENDIX.—Constitution U. S.—1787.


SECTION III.

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

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

SECTION IV.

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

ARTICLE V.

78. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes as part of this Constitution when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1803 shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State without its consent shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

Sec. 79. Prior debts.

" 80. Supreme Law.

Sec. 81. Oath of officers.

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

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

81. The Senators and Representatives before mentioned, and the
members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; no religious test but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

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

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

New Hampshire.

John Langdon,
Nicholas Gilman.

Massachusetts.
Nathaniel Gorham,
Rufus King.

Connecticut.
William Samuel Johnson,
Roger Sherman.

New York.
Alexander Hamilton.

New Jersey.
William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

Pennsylvania.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimmons,
Jared Ingersol,
James Wilson,
Gouverneur Morris.

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

Maryland.
James M'Henry,
Daniel, of St. Tho. Jenifer,
Daniel Carroll.

Virginia.
John Blair,
James Madison, jun.

North Carolina.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

South Carolina.
John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia.
William Few,
Abraham Baldwin.

Attest,
WILLIAM JACKSON, Secretary.
VIII. AMENDMENTS.

Sec. 83. Religion; Press; Assembling.
" 84. Right to bear arms.
" 85. Quartering troops.
" 86. Searches and seizures.
" 87. Trial for crimes; Private prop. &c.
" 88. Speedy trial; witnesses, &c.
" 89. Trial in civil cases.

Sec. 90. Bail and punishments.
" 91. Rights reserved.
" 92. Powers not delegated.
" 93. Cases; State a party.
" 94. Election of President and V. P.
" 95. Election of V. President by Senate.
" 96. Qualification.

First Congress. First Session.—March 4, 1789.

83. ART. I. Congress shall make no law respecting an establish-
ment of religion, or prohibiting the free exercise thereof; or abridg-
ing the freedom of speech, or of the press, or the right of the people
peaceably to assemble, and to petition the government for a redress
of grievances.

84. ART. II. A well-regulated militia being necessary to the se-
curity of a free State, the right of the people to keep and bear arms
shall not be infringed. 1

85. ART. III. No soldier shall, in time of peace, be quartered
in any house, without the consent of the owner, nor in time of war,
but in a manner to be prescribed by law.

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

87. ART. V. No person shall be held to answer for a capital or
otherwise infamous crime, unless on a presentment or indictment of
a Grand Jury, except in cases arising in the land or naval forces, or
in the militia, when in actual service, in time of war or public dan-
ger; nor shall any person be subject, for the same offence, to be twice
put in jeopardy of life or limb; nor shall be compelled in any
criminal case to be a witness against himself, nor be deprived of life,
liberty, or property, without due process of law; nor shall private
property be taken for public use without just compensation. 2

88. ART. VI. In all criminal prosecutions, the accused shall en-
joy the right to a speedy and public trial, by an impartial Jury, 3 of
the State and district wherein the crime shall have been committed,
which district shall have been previously ascertained by law, and to
be informed of the nature and cause of the accusation; to be con-
fronted with the witnesses against him; to have compulsory process
for obtaining witnesses in his favor; and to have the assistance of
 counsel for his defence.

89. ART. VII. In suits at Common Law, where the value in
controversy shall exceed twenty dollars, the right of trial by Jury
shall be preserved; and no fact tried by a Jury shall be otherwise

(1.) See 1 Kelly, 243.
(2.) This clause considered. 1 Kelly Rep. 533. 3 Kelly, 31. 7 Ga. Rep. 200.
(3.) See 1 Kelly, 222.
re-examined in any Court of the United States, than according to the rules of the Common Law.

Of bail and fines. 90. Art. VIII. Excessive bail shall not be required, nor exces-
sive fines imposed, nor cruel and unusual punishments inflicted.

Of rights reserved. 91. Art. IX. The enumeration in the Constitution of certain
rights shall not be construed to deny or disparage others retained
by the people.

Powers not delegated. 92. Art. X. The powers not delegated to the United States by
the Constitution, nor prohibited by it to the States, are reserved to
the States respectively, or to the people.

Third Congress. Second Session.—Dec. 2, 1793.

Of the Judicial power. 93. Art. XI. The Judicial power of the United States shall not
be construed to extend to any suit in Law or Equity, commenced
or prosecuted against one of the United States by citizens of another
State, or by citizens or subjects of any foreign State.

Eighth Congress. First Session.—Oct. 17, 1803.

Manner of electing the President and Vice-President. 94. Art. XII. The electors shall meet in their respective States,
and vote by ballot for President and Vice President, one of whom,
at least, shall not be an inhabitant of the same State with themselves:
They shall name in their ballots the person voted for as President,
and in distinct ballots the person voted for as Vice President; and
they shall make distinct lists of all persons voted for as President, and
of all persons voted for as Vice President, and of the number of votes
for each; which lists they shall sign and certify, and transmit, seal-
ed, to the seat of the government of the United States, directed to
the President of the Senate. The President of the Senate shall, in
presence of the Senate and House of Representatives, open all the
certificates, and the votes shall then be counted; the person having the
greatest number of votes for President shall be the President, if such
number be a majority of the whole number of electors appointed;
and if no person have such majority, then, from the persons having
the highest numbers, not exceeding three, on the list of those voted
for as President, the House of Representatives shall choose immedi-
ately, by ballot, the President. But, in choosing the President, the
votes shall be taken by States, the representation from each State
having one vote; a quorum for this purpose shall consist of a mem-
ber or members from two-thirds of the States, and a majority of all
the States shall be necessary to a choice. And if the House of Rep-
resentatives shall not choose a President, whenever the right of choice
shall devolve upon them, before the fourth day of March next fol-
lowing, then the Vice President shall act as President, as in the case
of the death or other constitutional disability of the President.

On failure to elect Vice-President, Senate shall elect. 95. The person having the greatest number of votes as Vice Pres-
ident shall be the Vice President, if such number be a majority of
the whole number of electors appointed; and if no person have a
Departments—Legislative power—Senate.

majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators; and a majority of the whole number shall be necessary to a choice.

96. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

II. THE CONSTITUTION OF THE STATE OF GEORGIA.

ADOPTED MAY 23, 1798—AS AMENDED BY SUBSEQUENT LEGISLATURES

ART. I. LEGISLATIVE DEPARTMENT.
ART. II. EXECUTIVE DEPARTMENT.
ART. III. JUDICIAL DEPARTMENT.
ART. IV. MISCELLANEOUS PROVISIONS.

ARTICLE I.

Sec. 1. Departments distinct. "1. Members' privileges.
| Sec. 13. Members' privileges. |
| " 15. Revenue Bills. |
| " 16. Passing bills. |
| " 17. Canvassing prohibited. |
| " 18. Oath of members. |
| " 20. Adjournments. |
| " 23. Void sales, Donations, |

1. Sec. I. The Legislative, Executive, and Judiciary departments of Government shall be distinct, and each department shall be confided to a separate body of magistracy; and no person, or collection of persons, being one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

2. Sec. II. The Legislative power shall be vested in two separate and distinct branches, to wit: a Senate and House of Representatives, to be styled the General Assembly.

3. Sec. III. [As amended by Act of 1842. Pam. 56, and 1843 Pam. 15.] The Senate shall be elected biennially* on the first Mon.

*Made biennial by Act of 1840, Pam. 23; 1841, Pam. 61.

(1.) This section considered. 8 Ga. 227.
n October, and shall consist of forty-seven members, and shall be composed of one member from each Senatorial District, which District shall be composed of two contiguous Counties, not including the County with the largest representative population, which shall constitute a separate District; which Districts shall be arranged and organized by the General Assembly, at the session when this shall be adopted, and if any new County shall be hereafter formed, it shall be annexed to one of the Districts from which it was taken.

4. Sec. IV. [As amended by the Act passed December, 1834, Pam. 69, and 1835, Pam. 52.] No person shall be a Senator who shall not have attained to the age of twenty-five years, and have been nine years a citizen of the United States, and three years an inhabitant of this State; and shall have usually resided within the County for which he shall be returned, at least one year immediately preceding his election, except persons who may have been absent on lawful business of this State or of the United States.*

5. Sec. V. The Senate shall elect by ballot a President out of their own body.

6. Sec. VI. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present; judgment in cases of impeachment shall not extend farther than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, within this State; but the party convicted, shall nevertheless be subject to indictment, trial, judgment, and punishment according to law.

7. Sec. VII. [As amended by Act of 1842, Pam. 56; and 1843, Pam. 15.] The House of Representatives† shall be composed of one hundred and thirty members; each County shall have one Representative, and no County shall have more than two Representatives; thirty-seven Counties having the greatest population, counting all free white persons, and three-fifths of the people of color, shall have two Representatives; the said apportionment shall be made by the General Assembly, at the session at which this section shall be adopted as an alteration of the Constitution, by an Act to be introduced after the adoption thereof, and a new apportionment shall be made at the session next after each future enumeration of the inhabitants of this State, made under the Constitution and Laws thereof, but at no other time.

8. Sec. VIII. [As amended in 1834, Pam. 69, and 1835, Pam. 52.] No person shall be a Representative who shall not have attained to the age of twenty-one years, and have been a citizen of the United States seven years, and three years an inhabitant of this

*The following is the property qualification dropped by the amendment—"And is and shall have been possessed in his own right of a settled frehold estate of the value of five hundred dollars, or of taxable property to the amount of one thousand dollars, within the County, for one year preceding his election; and whose estate shall on a reasonable estimation be fully competent to the discharge of his just debts over and above that sum.

†By amendment of 1840—1841, Pam. 61, the House of Representatives were to be elected biennially. The amendment of 1842—1843, is silent as to elections.
State; and have usually resided in the County in which he shall be chosen, one year immediately preceding his election, unless he shall have been absent on the public business of this State or of the United States.*

9. Sec. IX. The House of Representatives shall choose their Officers and other officers.

Sec. X. They shall have solely the power to impeach all persons who have been, or may be in office.

10. Sec. XI. No person holding any military commission or other appointment having any emolument or compensation annexed thereto, under this State, or the United States, or either of them, (except Justices of the Inferior Courts, Justices of the Peace, and officers of the militia,) nor any person who has had charge of public moneys belonging to the State, unaccounted for and unpaid, or who has not paid all legal taxes or contributions to the Government required of him, shall have a seat in either branch of the General Assembly; nor shall any Senator or Representative be elected to any office or appointment by the Legislature, having any emoluments or compensation annexed thereto, during the time for which he shall have been elected, with the above exceptions, unless he shall decline accepting his seat, by notice to the Executive, within twenty days after he shall have been elected; nor shall any member after having taken his seat, be eligible to any of the aforesaid offices or appointments during the time for which he shall have been elected.

11. Sec. XII. The meeting of the General Assembly shall be biennially on the second Tuesday in January, until such day of meeting be altered by law; a majority of each branch shall be authorized to proceed to business; but a smaller number may adjourn from day to day, and compel the attendance of their members in such manner as each House shall prescribe.

12. Sec. XIII. Each House shall be judges of the elections, returns, and qualifications of its own members, with powers to expel or punish by censuring, fining, and imprisoning, or either, for disorderly behavior, and may expel any person convicted of any felonious or infamous offence; each House may punish by imprisonment during session, any person not a member, who shall be guilty of disrespect, by any disorderly or contemptuous behavior in its presence, or who, during session, shall threaten harm to the body or estate of any member, for anything said or done in either House, or who shall assault any of them therefor; or who shall assault or arrest any witness in going to or returning therefrom, or who shall rescue any person arrested by order of either House.

*The property qualification of members before the amendment, was the following.—
"And shall be possessed, in his own right, of a settled freehold estate of the value of two hundred and fifty dollars, or of taxable property to the amount of five hundred dollars within the County, for one year preceding his election; and whose estate shall, on a reasonable estimation, be competent to the discharge of his just debts, over and above that sum."

†Made biennial by amendment of 1840. Pam. 33, and 1841, Pam. 61.
APPENDIX.—Constitution of Georgia.—1798.

Journals—Revenue bills—Passing bills—Oath.

13. Sec. XIV. No Senator or Representative shall be liable to be arrested during his attendance on the General Assembly, or for ten days previous to its sitting, or for ten days after the rising thereof, except for treason, felony, or breach of the peace; nor shall any member be liable to answer for anything spoken in debate, in either House, in any Court or place elsewhere; but shall nevertheless be bound to answer for perjury, bribery, or corruption.

14. Sec. XV. Each House shall keep a journal of its proceedings, and publish them immediately after their adjournment; and the yeas and nays of the members on any question, at the desire of any two members, be entered on the journals.

15. Sec. XVI. All bills for raising revenue or appropriating money shall originate in the House of Representatives; but the Senate shall propose or concur with amendments as in other bills.

16. Sec. XVII. Every bill shall be read three times, and on three separate days, in each branch of the General Assembly, before it shall pass, unless in cases of actual invasion or insurrection; nor shall any law or ordinance pass containing any matter different from what is expressed in the title thereof; and all Acts shall be signed by the President in the Senate, and the Speaker in the House of Representatives: no bill or ordinance which shall have been rejected by either House, shall be brought in again during the session, under the same or any other title, without the consent of two-thirds of each branch.

17. Sec. XVIII. Each Senator and Representative, before he be permitted to take his seat, shall take an oath or make affirmation that he hath not practised any unlawful means, either directly or indirectly, to procure his election, and every person shall be disqualified from serving as a Senator or Representative for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat, or canvassed for such election, and every candidate employing like means and not elected, shall on conviction be ineligible to hold a seat in either House, or to hold any office of honor or profit for the term of one year, and to such other disabilities or penalties as may be prescribed by law.

18. Sec. XIX. Every member of the Senate or House of Representatives shall, before he takes his seat, take the following oath or affirmation, to wit: "I, A B, do solemnly swear, or affirm, (as the case may be,) that I have not obtained my election by bribery, treats, canvassing, or other undue or unlawful means, used by myself, or others by my desire or approbation, for that purpose; that I consider myself constitutionally qualified as a Senator or Representative; and that on all questions and measures which may come before me, I will give my vote, and so conduct myself, as may, in my judgment, appear most conducive to the interest and prosperity of this State; and that I will bear true faith and allegiance to the same;”

and to the utmost of my power and ability observe, conform to, support and defend the Constitution thereof.  

19. Sec. XX. No person who hath been, or may be convicted of felony, before any Court of this State, or any of the United States, shall be eligible to any office or appointment of honor, profit, or trust, within this State.

20. Sec. XXI. Neither House, during the session of the General Assembly shall, without the consent of the other, adjourn for more than three days, nor to any other place than that at which the two branches shall be sitting; and in case of disagreement between the Senate and House of Representatives with respect to their adjournment, the Governor may adjourn them.

21. Sec. XXII. The General Assembly shall have power to make all laws and ordinances which they shall deem necessary and proper for the good of the State, which shall not be repugnant to this Constitution.

22. Sec. XXIII. They shall have power to alter the boundaries of the present Counties, and to lay off new ones, as well out of the Counties already laid off, as out of the other territory belonging to the State; but the property of the soil in a free government, being one of the essential rights of a free people, it is necessary, in order to avoid disputes, that the limits of this State should be ascertained with precision and exactness; and this convention composed of the immediate representatives of the people, chosen by them to assert their rights, and to revise the powers given by them to the Government, and from whose will all ruling authority of right flows, doth assert and declare the boundaries of this State to be as follows: That is to say, the limits, boundaries, jurisdiction, and authority of the State of Georgia do, and did, and of right ought to extend from the sea, or the mouth of the river Savannah, along the northern branch or stream thereof, to the fork or confluence of the rivers now called Tugalo and Keowee and from thence along the most northern branch or stream of the said river Tugalo, till it intersects the northern boundary line of South Carolina. If the said branch or stream of Tugalo extends so far north, reserving all the islands in the said rivers Savannah and Tugalo to Georgia; but if the head spring or source of any branch or stream of the said river Tugalo does not extend to the north boundary line of South Carolina, then a west line to the Mississippi, to be drawn from the head spring or source of the said branch or stream of Tugalo river, which extends to the highest northern latitude; thence down the middle of the said river Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude; south by a line drawn due east from the termination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the river Apalachicola or Chattahoochee; thence along the middle thereof to its junction with Flint river; thence straight to

* Also to support the Constitution of the United States. See Constitution United States, Art. VI. sec. 81.

[1.] The extent of this power considered. 8 Ga 216.
the head of, St. Mary's river, and thence along the middle of St. Mary's river to the Atlantic Ocean; and from thence to the mouth or inlet of Savannah river, the place of beginning. Including and comprehending all the lands and waters within the said limits; boundaries, and jurisdictional rights, and also all the islands within twenty leagues of the sea coast. And this convention doth further declare and assert, that all the territory without the present temporary line and within the limits aforesaid, is now of right the property, of the free citizens of this State, and held by them in sovereignty, inalienable but by their consent: Provided nevertheless, that nothing here- in contained shall be construed so as to prevent a sale to, or contract with the United States, by the Legislature of this State, of and for all or any part of the western territory of this State, laying westward of the river Chattahoochee, on such terms as may be beneficial to both parties; and may procure an extension of settlement, and an extinguishment of Indian claims in and to the vacant territory of this State, to the east and north of the said river Chattahoochee, to which territory such power of contract or sale, by the Legislature, shall not extend; And provided also, the Legislature may give its consent to the establishment of one or more governments westward thereof; but monopolies of land by individuals being contrary to the spirit of our free Government, no sale of territory of this State, or any part thereof, shall take place to individuals or private companies, unless, a County or Counties shall have been first laid off, including such territory, and the Indian rights shall have been extinguished therefrom.

23. Sec. XXIV. The foregoing section of this Article having declared the common rights of the free citizens of this State in and to all the territory without the present temporary boundary line, and within the limits of this State thereby defined, by which the contemplated purchases of certain companies of a considerable portion thereof are become constitutionally void; and justice and good faith require that the State should not detain a consideration for a contract which has failed; the Legislature, at their next session, shall make provision by law for returning to any person or persons who has or have bona fide deposited moneys for such purchases in the treasury of this State: Provided, that the same shall not have been drawn therefrom in terms of the Act passed the 13th day of Feb. 1796, commonly called the rescinding Act, or the appropriation laws of the years 1796, and 1797; nor shall the moneys paid for such purchases ever be deemed a part of the funds of this State, or be liable to appropriation as such; but until such moneys be drawn from the treasury, they shall be considered altogether at the risk of the persons who have deposited the same. No money shall be drawn out of the treasury, or from the public funds of this State, except by appropriation made by law, and a regular statement and account of the receipts and expenditures of all public moneys shall be published from time to time. No yote, resolution, law, or order shall pass the General Assembly, granting a donation or gratuity in favor of any person whatever, but by the concurrence of two thirds of the General Assembly.

24. Sec. XXV. It shall be the duty of the Justices of the Infe-
Census—Governor.

rion Court, or any three of them, in each County respectively, within sixty days after the adjournment of this convention, to appoint one or more fit persons in each County, not exceeding one for each battalion district, whose duty it shall be to take a full and accurate census or enumeration of all free white persons and people of color residing therein, distinguishing, in separate columns, the free white persons from persons of color; and return the same to the Clerks of the Superior Courts of the several Counties, certified under their hands, on or before the first day of December next; the persons so appointed being first severally sworn before the said Justices, or either of them, duly and faithfully to perform the trust reposed in them; and it shall be the duty of the said Clerks to transmit all such returns under seal, directed to the Speaker of the House of Representatives, at the first session of the Legislature thereafter; and it shall be the duty of the General Assembly, at their said first session, to apportion the members of the House of Representatives among the several Counties, agreeably to the plan prescribed by this Constitution, and to provide an adequate compensation for the taking of the said census. Every person whose usual place of abode shall be in any family on the first Monday in July next, shall be returned as of such family; and every person, occasionally absent at the time of taking the enumeration, as belonging to that place in which he usually resides. The General Assembly shall, by law, direct the manner of taking such census or enumeration, within every subsequent term of seven years, in conformity to this Constitution. And it is declared to be the duty of all officers, civil and military, throughout this State, to be aiding and assisting in the true and faithful execution thereof. In case the Justices of the Inferior Courts should fail to make such appointments, or if there should not be a sufficient number of such Justices in any County, then the Justices of the Peace, or any three of them, shall have and exercise like powers and authority respecting the said census; and if the census or enumeration of any County shall not be so taken and returned, then, and in that case, the General Assembly shall apportion the representation of such County, according to the best evidence in their power, relative to its population.

ARTICLE II.

Sec. 25. Governor, term of office.

" 23. Election, contested elections.
" 27. Qualification.
" 28. Vacancy.
" 29. Oath.
" 30. Style.
" 31. Pardoning power.

Sec. 32. Writs of election, special sessions.

" 33. Filling vacancies.
" 34. Veto power.
" 35. As to resolutions.
" 36. State House officers.
" 37. Great Seal.
" 38. Governor's Secretaries.

25. Sec. I. The Executive power shall be vested in a Governor, who shall hold his office during the term of two years, and until such time as a successor shall be chosen and qualified: He shall have a

*Last census, 1845—see Acts of 1843, Pam. 12.
APPENDIX.—Constitution of Georgia.—1798.

Election—Contested elections—Vacancies.

The Governor elected by the people.

The electors, when, where and law held.

The returns, how sealed up and directed.

Said returns, how opened and published.

The person having a majority to be declared elected.

In case of no such majority, the Governor by joint ballot; and in all cases of election of a Governor by the General Assembly, a majority of the votes of the members present shall be necessary for a choice. Contested elections shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law."

27. Sec. III. [As amended by Acts of 1815. Pam. 17, and 1817. Pam. 62.] No person shall be eligible to the office of Governor who shall not have been a citizen of the United States twelve years, and an inhabitant of this State six years, and who hath not attained the age of thirty years. *

28. Sec. IV. [Proposed as an amendment, 19th December, 1817. Vol. III. Pam. of 1817, p. 74; and passed 15th December, 1818, p. 212.] In case of the death, resignation, or disability of the Governor, the President of the Senate, or the last acting President of the Senate shall exercise the Executive powers of the government until such disability be removed, in the election and qualification of the

*Property qualification before this amendment. "and who does not possess 500 acres of land in his own right within this State, and other property to the amount of $4,000: and whose estate shall not on any reasonable estimation, be competent to the discharge of his just debts over and above that sum."

†Added by the amendment.

competent salary established by law, which shall not be increased or diminished during the period for which he shall have been elected; neither shall he receive within that period, any other emolument, from the United States, or either of them, or from any foreign power.
Governor by the General Assembly: And in case of the death, resignation, or disability of the President of the Senate, or the last acting President of the Senate, the Speaker of the House of Representatives, or the acting Speaker of the House of Representatives, shall exercise the Executive powers of the government until such disability be removed in the election and qualification of a Governor by the General Assembly.*

29. Sec. V. The Governor shall, before he enters on the duties of his office, take the following oath or affirmation: "I do solemnly swear or affirm, (as the case may be,) that I will faithfully execute the office of Governor of the State of Georgia; and will, to the best of my abilities, preserve, protect, and defend the said State, and cause justice to be executed in mercy therein, according to the Constitution and Laws thereof."

30. Sec. VI. He shall be Commander-in-Chief of the army and navy of this State, and of the militia thereof.

31. Sec. VII. He shall have power to grant reprieves for offences against the State, except in cases of impeachment, and to grant pardons, or to remit any part of a sentence, in all cases after conviction, except for treason or murder, in which cases he may respite the execution, and make report thereof to the next General Assembly, by whom a pardon may be granted.

32. Sec. VIII. He shall issue writs of election to fill up all vacancies that happen in the Senate or House of Representatives, and shall have power to convene the General Assembly on extraordinary occasions; and shall give them from time to time information of the state of the republic, and recommend to their consideration such measures as he may deem necessary and expedient.

33. Sec. IX. When any office shall become vacant by death, resignation, or otherwise, the Governor shall have power to fill such vacancy; and persons so appointed shall continue in office until a successor is appointed agreeably to the mode pointed out by this Constitution, or by the Legislature.

34. Sec. X. He shall have the revision of all bills passed by both Houses, before the same shall become laws, but two-thirds of both Houses may pass a law notwithstanding his dissent; and if any bill should not be returned by the Governor within five days after it hath been presented to him, the same shall be a law, unless the General Assembly, by their adjournment, shall prevent its return.

35. Sec. XI. Every vote, resolution, or order, to which the concurrence of both Houses may be necessary, except on a question of adjournment, shall be presented to the Governor; and before it shall take effect, be approved by him, or being disapproved, may be re-passed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

36. Sec. XII. There shall be a Secretary of the State, a Treas-

*Added by the amendment.
†And without his signature. [See Resolution of 13th Dec. 1811. Vol. III. 1052.] See the question considered whether his signature is necessary to the validity of any law. 8 Ga. Rep. 210, 227.
Great seal of the State

Governor's Secretaries.

APPENDIX.—Constitution of Georgia.—1798.

Sec. of State, Treasurer, and Surveyor General, appointed in the same manner, and at the same session of the Legislature; and they shall hold their offices for the like period as the Governor, and shall have a competent salary, including such emoluments as may be established by law, which shall not be increased or diminished during the period for which they shall have been elected.

37. Sec. XIII. The great seal of the State shall be deposited in the office of the Secretary of State, and shall not be affixed to any instrument of writing, but by order of the Governor or General Assembly; and the General Assembly shall, at their first session after the rising of this Convention, cause the great seal to be altered by law.

38. Sec. XIV. The Governor shall have power to appoint his own Secretaries.*

ARTICLE III.

Sec. 39. Jurisdiction of Courts.

" 40. Judges' salaries.

" 41. State's Attorney and Solicitors.

" 42. Judges of Inferior Court.

" 43. Justices of the Peace.

" 44. Court of Ordinary—appeal, &c.

Sec. 45. Mandamus—prohibition, &c.

" 46. Digest—counsel.

" 47. Divorces.


" 49. Sheriffs.

Sec. 39. [As amended in 1811, and again in 1818, and again in 1835, and again in 1843.] The Judicial powers of this State shall be vested in a Supreme Court for the correction of errors, a Superior, Inferior and Justices' Courts, and in such other Courts as the Legislature shall, from time to time, ordain and establish. The Supreme Court shall consist of three Judges, who shall be elected by the Legislature for such term of years as shall be prescribed by law, and shall continue in office until their successors shall be elected and qualified, removable by the Governor on the address of two-thirds of both branches of the General Assembly for that purpose, or by impeachment and conviction thereon. The said Court shall have no original jurisdiction, but shall be a Court alone for the trial and correction of errors in Law and Equity from the Superior Courts of the several Circuits, and shall sit at least once a year, at a time to be prescribed by law, in each of five Judicial districts, to be hereafter laid off and designated by the Legislature for that purpose, at the most central point in such Judicial district, or at such other point in each district as shall by the General Assembly be ordained, for the trial and determination of writs of error from the several Superior Courts included in such Judicial districts. And the said Court shall, at each session in each district dispose of and finally determine each and every case on the docket of such Court at the first term after such writ of error brought; and in case the plaintiff in error in any

*By Act of 1789, Watkins, 413, it is provided that there shall be but two Secretaries, who shall be citizens of the State and 21 years old. By Act of 1811, Pam. p. 13, three are allowed.

such case shall not be prepared, at such first term of such Court, after error brought to prosecute the same, unless precluded by some providential cause from such prosecution, it shall be stricken from the docket, and the judgment below shall stand affirmed. The Judges of the Superior Court shall be elected for the term of four years, and shall continue in office until their successors shall be elected and qualified, removable by the Governor on the address of two-thirds of both branches of the General Assembly for that purpose, or by impeachment and conviction thereon. The Superior Court shall have exclusive jurisdiction in all criminal cases (except as relates to people of color, and fines for neglect of duty and for contempt of Court, for violations against road laws, and for obstructing water courses, which shall be vested in such judicature or tribunal as shall be or may have been pointed out by law, and except in all other minor offences committed by free white persons, and which do not subject the offender or offenders to loss of life, limb or member, or to confinement in the penitentiary; in all such cases Corporation Courts, such as now exist or may hereafter be constituted in any incorporated City, being a sea-port town and a port of entry, may be vested with jurisdiction, under such rules and regulations as the Legislature may hereafter by law direct,) which shall be tried in the County where the crime was committed; and in all cases respecting titles to land, which shall be tried in the County where the land lies, and also concurrent jurisdiction in all other civil cases, and shall have power to correct errors in inferior judicatories, by writ of certiorari, and to grant new trials in said Superior Courts on proper and legal grounds; and in all cases where a new trial shall be so allowed, the Judge allowing the same shall enter on the minutes of said Court his reasons for the same, and the said Superior Courts shall have appellate jurisdiction in such other cases as may be pointed out by law, in cases arising in inferior judicatories, which shall in no case tend to remove the cause from the County in which the action originated. [Thus far as amended in 1835, Pam. 49.] The Inferior Courts shall also have concurrent jurisdiction in all civil cases, (except in cases respecting the title to lands,) which shall be tried in the County wherein the defendant resides; and in cases of joint obligors, or joint promissors residing in different Counties, the same may be brought in either County, and a copy of the petition and process served on the party residing out of the County in which the suit may be commenced, shall be deemed sufficient ser-

*The passages in SMALL CAPITALS were added by the amendment proposed in 1810 and passed in 1811. Those in the italics characters by the amending Act proposed in 1817, and passed in 1818. [Vol. III. 175.]

(2.) Does not include local by-laws or police regulations of town corporations. 4 Ga. Rep. 509.
(3.) Equity causes are not included. 3 Kelly, 575. 4 Ga. Rep. 571.
APPENDIX.—Constitution of Georgia.—1798.

Judges—State's attorneys—Court of Ordinary.

vice, under such rules and regulations as the Legislature have or may direct. [And in case of a maker and indorser or indorsers of promissory notes residing in different Counties in this State, the same may be sued in the County where the maker resides, and a copy of the petition and process served on the indorser or indorsers residing out of the County in which the suit may be commenced, shall be deemed sufficient service under the same rules and regulations as the Legislature have or may direct, in the case of joint obligors and joint promissors.] The Superior and Inferior Courts shall sit in each County twice in every year, at such stated times as have or may be appointed by the Legislature.

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

41. Sec. III. [As amended in 1841, Pam. 61.] There shall be a State's Attorney and Solicitors appointed by the Legislature, and commissioned by the Governor, who shall hold their offices for the term of four years, or until their successors shall be elected and qualified, unless removed by sentence on impeachment, or by the Governor, on the address of two-thirds of each branch of the General Assembly. They shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office.

42. Sec. IV. [Amended in 1812, and again amended in 1819, Vol. III. 171, 177.] The Justices of the Inferior Courts shall be elected by the persons entitled to vote for members of the Legislature, in such manner as the Legislature may by law direct.

43. Sec. V. Amended in 1812, and again amended in 1819, Vol. III. 171, 177.] The Justices of the Peace throughout this State, shall be elected by the persons residing in their respective districts, entitled to vote for members of the General Assembly, under such rules and regulations as the Legislature may by law direct.

44. Sec. VI. The powers of a 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; but the Inferior Court shall have power to vest the care
of the records and other proceedings thereon, in the Clerk, or such Clerk, or other person as they may appoint, and any one or more Justices of the said Court, with such Clerk or other person, may issue citations, and grant temporary letters, in time of vacation, to hold until the next meeting of the said Court; and such Clerk or other person may grant marriage licenses.

45. Sec. VII. The Judges of the Superior Courts, or any one of them, shall have power to issue writs of mandamus, prohibition, scire facias, and all other writs which may be necessary for carrying their powers fully into effect.

46. Sec. VIII. Within five years after the adoption of this Constitution, the body of our laws, civil and criminal, shall be revised, digested and arranged, under proper heads, and promulgated in such manner as the Legislature may direct; and no person shall be disqualified from advocating or defending his cause before any Court of tribunal, either by himself or counsel, or both.

47. Sec. IX. [As amended by the Act finally passed in 1833, Pam. 47, and again in 1849, Pam. 419.]

Divorces shall be final and conclusive when the parties shall have obtained the concurrent verdicts of two special Juries authorizing a divorce upon such legal principles, as the General Assembly may by law prescribe.

48. Sec. X. [As amended 16th December, 1808. Vol. II. 515.]
The Clerks of the Superior and Inferior Courts shall be elected on the same day as pointed out by law for the election of the other County officers.

49. Sec. XI. Sheriffs shall be appointed in such manner as the General Assembly may by law direct, and shall hold their appointments for the term of two years, unless sooner removed by sentence on impeachment, or by the Governor, on the address of two-thirds of the Justices of the Inferior Court and of the Peace in the County; but no person shall be twice elected Sheriff within any term of four years; and no County officer after the next election shall be chosen at the time of electing a Senator or Representative.

*But the Clerk is not removable by the Court of Ordinary. See the resolution in the case of Edward White. Vol. II. 681.
†The following is the preamble to the amendment of 1833:
Whereas, the frequent, numerous and repeated applications to the Legislature to grant divorces, has become a great annoyance to that body, and is well worthy their attention, as well on account of the expense consequent on said applications, as the unnecessarily swelling the laws and journals; and believing that the public good would be as much promoted, and that the parties would receive full and complete justice; Be it enacted, etc.
‡The words in italics, added by amendment of 1847, 1849.
§Originally thus—"The Clerks of the Superior and Inferior Courts shall be appointed in such manner as the Legislature may by law, direct; shall be commissioned by the Governor, and shall continue in office during good behavior."

[3.] See 2 Kelly, 192.
ARTICLE IV.

Sec. 50. Electors' qualification.
Sec. 51. Elections by General Assembly.
Sec. 52. Election of militia officers.
Sec. 53. Filling vacancies.
Sec. 54. Jury trial, press, ex post, &c.
Sec. 55. Holders of public money.
Sec. 56. Insolvent debtors.
Sec. 57. Amnesty as to impeachments.

50. Sec. I. The electors of members of the General Assembly, shall be citizens and inhabitants of this State, and shall have attained the age of twenty-one years, and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election, and shall have resided six months within the County: Provided, that in case of invasion, and the inhabitants shall be driven from any County, so as to prevent an election therein, such refugee inhabitants, being a majority of the voters of such County, may meet under the direction of any three Justices of the Peace thereof, in the nearest County, not in a state of alarm, and proceed to an election, without having paid such tax so required of electors, and the persons elected thereat, shall be entitled to their seats.

51. Sec. II. All the elections, by the General Assembly, shall be by joint ballot of both branches of the Legislature; and when the Senate and House of Representatives unite for the purpose of electing, they shall meet in the Representative chamber, and the President of the Senate shall in such cases preside, receive the ballots, and declare the person or persons elected. In all elections by the people, the electors shall vote viva voce, until the Legislature shall otherwise direct.

52. Sec. III. [As amended by Acts of 1842, Pam. 57, and 1843, Pam. 16.]

It shall and may be lawful for all Major Generals and Brigadier Generals, to be elected by the people of the respective divisions and brigades; and all persons subject to militia duty, shall be entitled to vote for the same only; and shall be commissioned by the Governor. All other officers of the militia shall be elected in such manner as the Legislature may direct, and shall be commissioned by the Governor; and all militia officers now in commission, and those which may be hereafter commissioned, shall hold their commissions during their usual residence within the division, brigade, regiment, battalion, or company, to which they belong, unless removed by sentence of a court-martial, or by the Governor, on the address of two-thirds of each branch of the General Assembly.

53. Sec. IV. All persons appointed by the Legislature to fill vacancies, shall continue in office only so long as to complete the time for which their predecessors were appointed.

† The portion in italics is the amendment of 1842-13.
54. Sec. V. Freedom of the press, and trial by Jury, as heretofore used in this State, shall remain inviolate; and no ex post facto law shall be passed.

55. Sec. VI. No person who heretofore hath been, or hereafter may be a collector or holder of public moneys, shall be eligible to any office in this State, until such person shall have accounted for, and paid into the Treasury, all sums for which he may be accountable or liable.

56. Sec. VII. The person of a debtor, where there is not a strong presumption of fraud, shall not be detained in prison after delivering bona fide all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law.

57. Sec. VIII. Convictions on impeachments, which have heretofore taken place, are hereby released, and persons lying under such convictions restored to citizenship.

58. Sec. IX. The writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it.

59. Sec. X. No person within this State shall, upon any pretense, be deprived of the inestimable privilege of worshipping God in a manner agreeable to his own conscience, nor be compelled to attend any place of worship, contrary to his own faith and judgment, nor shall he ever be obliged to pay tithes, taxes, or any other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or hath voluntarily engaged to do. No one religious society shall ever be established in this State in preference to another, nor shall any person be denied the enjoyment of any civil right merely on account of his religious principle.

60. Sec. XI. There shall be no future importation of slaves into this State from Africa, or any foreign place, after the first day of October next. The Legislature shall have no power to pass laws for the emancipation of slaves, without the consent of each of their respective owners previous to such emancipation. They shall have no power to prevent emigrants, from either of the United States to this State, from bringing with them such persons as may be deemed slaves by the laws of any one of the United States.

61. Sec. XII. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection by such slave, and unless such death should happen by accident in giving such slave moderate correction.

62. Sec. XIII. The arts and sciences shall be promoted in one

*See "Tax," sec. 63, as to surety of collectors.


This clause explained to mean, that it shall not be taken away in cases where it existed in 1798, and not that there must be a Jury in all cases. 5 Ga. Rep. 194.

APPENDIX.—Constitution of Georgia.—1798.

Arts and sciences—Amendments.

Promotion of more seminaries of learning, and the Legislature shall, as soon as conveniently may be, give such further donations and privileges to those already established as may be necessary to secure the objects of their institution; and it shall be the duty of the General Assembly at their next session to provide effectual measures for the improvement and permanent security of the funds and endowments of such institutions.

63. Sec. XIV. All civil officers shall continue in the exercise of the duties of their several offices, during the periods for which they were appointed, or until they shall be superseded by appointments made in conformity to this Constitution: And all laws now in force shall continue to operate, so far as they are compatible with this Constitution, until repealed; and it shall be the duty of the General Assembly to pass all necessary laws and regulations for carrying this Constitution into full effect.

64. Sec. XV. No part of this Constitution shall be altered, unless a bill for that purpose, specifying the alteration intended to be made, shall have been read three times in the House of Representatives, and three times in the Senate, on three several days in each House, and agreed to by two-thirds of each House respectively; and when any such bill shall be passed in manner aforesaid, the same shall be published at least six months previous to the next ensuing election for members of the General Assembly: and if such alterations, or any of them so proposed, shall be agreed to in their first session thereafter by two-thirds of each branch of the General Assembly after the same shall have been read three times on three separate days in each respective House, then and not otherwise, the same shall become a part of this Constitution.†

We, the underwritten delegates of the people of the State of Georgia, chosen and authorized by them to revise, alter, or amend the powers and principles of their Government, do declare, ordain, and ratify the several articles and sections contained in the six pages hereunto prefixed, as the Constitution of this State; and the same shall be in operation from the date hereof.

In testimony whereof, we, and each of us respectively, have hereunto set our hands, at Louisville, the seat of Government, this thirtieth day of May, in the year of our Lord one thousand seven hundred and ninety-eight, and in the twenty-second year of the independence of the United States of America; and have caused the great seal of the State to be affixed thereto.

*The word "annual" was stricken out by amendment of 1849—1841, Pam. 61.
†There appears to be no established usage in the authentication of such Acts; at least as to the signing, dating, and certification. The different modes heretofore pursued, are almost as numerous as the Acts themselves; but by the resolution of 16th Dec. 1811, [Vol. III. 1089,] the opinion is expressed, "that the Governor's signature is not intended in the passage of any bill upon which both Houses had exercised their constitutional right of two-thirds," and adopting as a rule in future, "That when an alteration or amendment to the Constitution has passed during one session of the Legislature, the same bill, with the seal of State thereunto affixed, shall be introduced for its final passage at the next, and that no other bill be received in lieu thereof."
III. STATUTE OF FRAUDS.

Sec. 1. Parol leases—estate at will.
   " 2. Unless under three years.
   " 3. No freehold estate by parol.
   " 4. What agreements in writing?
   " 5. Devises of lands.
   " 6. Revocation of wills.
   " 7. Declarations of trusts.
   " 8. Trusts by implication.
   " 9. Assignments of trusts.
   " 10. Pi. fas. vs. ceutui que trust.
   " 11. Proviso as to heirs.
   " 12. Estates per autre vie.

   " 15. Reduced to writing.
   " 17. Revocation; wills of personality.
   " 18. Soldiers' and mariners' wills.
   " 19. Husband—sole heir.
   " 20. Legatees; witnesses.
   " 21. After payment or refusal.
   " 22. Creditors, witnesses.
   " 23. Goes to their credit.
   " 24. Bonds, &c. void as to creditors.

29th CHARLES II. Ch. 3.

An Act for prevention of Frauds and Perjuries.

1. SEC. I. For prevention of many fraudulent practices, which are commonly endeavor-
ed to be upheld by perjury, and subornation of perjury: Be it enacted, &c. That from and after the 24th day of June, which shall be A. D. 1677, all leases, estates, interest of free-
holds, or terms of years, or any uncertain interest of, in, or out of any messuages, manors, lands, tenements, or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfuly authorized by writing, shall have the force of law, and shall be void. But, and shall not either in Law or Equity be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding.

2. SEC. II. Except nevertheless all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord, during such term, shall amount unto two-third parts at least of the full improved value of the thing demised.

3. SEC. III. And moreover, that no leases, estates, or interests, either of freehold or term of years, or any uncertain interest, not being copyhold, or customary interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, shall at any time after the said 24th day of June, be assigned, granted, or surrendered, unless it be by deed, or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents, thereunto lawfuly authorized by writing, or by act and operation of law.

4. SEC. IV.* No action shall be brought whereby to charge any executor or admin-
istrator upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or
misappropriations of another person; 2 or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agree-
ment upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

* The clause which occurs here, and in many of the succeeding sections, fixing, after the 24th of June, 1677, for the commencement of the operation of the Act, is omitted.

[1.] As to a parol license executed, see 3 Kelly, 83.
[2.] A promise to indemnify another for becoming security to a third, need not be in writing. 1 Kelly, 294.
A promise to indemnify a co-surety without consideration, is void. Ibid.
A parol promise by the husband to pay the separate debt of his wife, is void. 6 Ga. Rep. 7.

The consideration must also be in writing. 6 Ga. Rep. 390.
[3.] A contract executed on both sides is not included. 1 Kelly, 348. Nor where the goods are to be delivered within a year, although the price is to be paid thereafter. Ibid. After performance by the vendor, he cannot avail himself of the Statute. Ibid.
APPENDIX.—Statute of Frauds.

Agreements to be in writing—Wills—Assignment of Trusts—Pi. fi. vs. Cestui que trusts.

Devises of lands to be in writing, and attested by 3 or 4 witnesses.

5. Sec. V. All devises and bequests of any lands, or tenements, devisable either by force of the Statute of Wills, or by this Statute, or by force of the custom of Kent, or by force of the custom of any borough, or any other particular custom, shall be in writing, and signed, by the party so devising the same, or by some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else they shall be utterly void, and of none effect.

How wills shall be revocable.

6. Sec. VI. And moreover, no devise in writing of lands, tenements, or hereditaments, or any clause thereof, at any time to be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same, by the testator himself, or in his presence, and by his directions and consent; but all devises and bequests of lands and tenements shall remain and continue in force until the same be burnt, cancelled, torn, or obliterated by the testator, or his directions, in manner aforesaid, unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or four witnesses, declaring the same, any former law or usage to the contrary notwithstanding.

Declarations or creations of trusts or confidences to be in writing.

7. Sec. VII. All declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party, who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect.

Trusts by implication of law excepted.

8. Sec. VIII. Provided always, that where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result from the implication or construction of law, or be transferred or extinguished by an act or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this Statute had not been made; anything hereinbefore contained to the contrary notwithstanding.

Assignments of trusts to be in writing.

9. Sec. IX. All grants and assignments of any trust or confidence, shall likewise be made in writing, signed by the party granting or assigning the same by such last will or devise, or else they shall likewise be utterly void and of none effect.

Lands, &c., shall be liable to executions against cestui que trust.

10. Sec. X. It shall and may be lawful for every Sheriff, or other officer, to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for, and upon any judgment, Statute, or recognizance, hereafter to be made, or had, to do, make, and deliver execution unto the party in that behalf suing, of all such lands, tenements, rents, and hereditaments, as any other person or persons be in any manner of wise seized or possessed, or hereafter shall be seized or possessed in trust for him against whom execution is so made, like as the Sheriff or other officer might or ought to have done, if the said party against whom execution hereafter shall be so made, had been seized of such lands, tenements, rents, or other hereditaments, of such estate as they be seized of in trust for him at the time of the said execution sued; which lands, tenements, rents, and hereditaments, by force of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person or persons as shall be so seized or possessed in trust for him against whom execution is so made, and if any cestui que trust hereafter shall die, leaving a trust in fee simple to descend to his heir, there, and in every such case, such trust shall be deemed and taken, and is hereby declared to be assets by descent, and the heir shall be liable to, and chargeable with the obligation of his ancestors for and by reason of such assets, as fully and amply as he might or ought to have been, if the estate in law had descended to him in possession in like manner as the trust descended; any law, custom, or usage to the contrary in any wise notwithstanding.

Sec. XI. Provided always, that no heir that shall become chargeable by reason of any estate or trust made assets in his hands by this law, shall by reason of any kind of plea, or confession of the action, or suffering judgment by saeculare, or any other matter, be chargeable to pay the condemnation out of his own estate; but executions shall be sued of the whole estate so made assets in his hands by descent, in whose hands soever it shall come, after the writ purchased, in the same manner as it is to be at, and by the Common Law, where the heir at law, pleading a true plea, judgment is prayed against him thereon; any thing in this present Act contained to the contrary notwithstanding.

Sec. XII. And for the amendment of the law in the particulars following: Be it further enacted, &c. That from henceforth any estate per aeterne vie shall be devisable by will in writing, signed by the party so devising the same, or by some other person in his presence, and by his express directions, attested and subscribed in the presence of the devisor by three or more witnesses; and if no such devise thereof be made, the same

[1] The position must be such that the testator could have seen had he been proper to look. 6 Ga. Rep. 539.

APPENDIX.—Statute of Frauds.

Sale of goods—Nuncupative wills—Revocation of wills.

shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands, and where there is no special occupant, shall go to executors.

Superseded by the provisions of our Judiciary Law.

13. Sec. XVII. No contract for the sale of goods, wares, and merchandise, for the price of ten pounds sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in some payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such a contract, or their agents thereunto lawfully authorized.

Sec. XVIII. [Relates to recognizances in the nature of Statutes staple—not allowed by the Judicial Acts of this State.]

14. Sec. XIX. And for prevention of fraudulent practices, in setting up nuncupative wills, which have been the occasion of much perjury: Be it enacted, &c. That no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by the oaths of three witnesses (at the least) that were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or their habitation or dwelling, or where he or she hath been resident for the space of ten days, or more, next before the making of such will, except where such person was surprised or taken sick, being from his own home, and died before he returned to the place of his or her dwelling.

15. Sec. XX. After six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

16. Sec. XXI. No letters testamentary, or probate of any nuncupative will, shall pass the seal of any Court, till fourteen days at least after the decease of the testator be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process have first issued to call in the widow, or next of kin to the deceased, to the end they may contest the same, if they please.

17. Sec. XXII. No will in writing concerning any goods or chattels, or personal estate, shall be repealed, nor shall any clause, devise, or bequest therein, be altered or changed by any words, or will by word of mouth only, except the same be in the lifetime of the testator committed to writing, and after the writing thereof, read unto the testator, and allowed by him, and proved to be so done by three witnesses at the least.

18. Sec. XXIII. Provided always, that notwithstanding this Act, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his movable, wages, and personal estate, as he or they might have done before the making of this Act.

Sec. XXIV. [Saves the jurisdiction of the Archbishops' and other Ecclesiastical Courts.]

19. Sec. XXV. And for the explaining one Act of this present Parliament, entitled "An Act for the better settling of Intestates' Estates," Be it declared, That neither the said Act, nor any thing therein contained, shall be construed to extend to the estates of feme covert that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same as they might have done before the making of the said Act.

* Which must be such as are admissible in trials at Common Law. 4 and 5 Ann. c. 16
† The effects of officers or soldiers dying in the service of the United States are to be inventoried and sent to the War Department, for the use of their legal representatives. [See 1 Greyd. Appendix 155. 2 Greyd. 18.]
‡ And see Executors, Administrators, &c. Sec. 29.

[1.] Executory contracts are included. 6 Ga. Rep. 554.

Contracts which look to the work and labor as the primary consideration, are not included. Alter, where the work and labor are not the essential consideration. Ibid.

Cotton prepared for market, held to be within the Statute. Ibid.
APPENDIX.—Statute of Frauds.

Witnesses to wills—Conveyances fraudulent as to creditors and purchasers.

25th George II.—13th and 27th Eliz.

Abstract of the Act of 25th Geo. II. ch. 6, explanatory of the foregoing.—[See Rob. on Frauds, 474.]

20. SEC. I. Reciting that doubts had arisen who were to be deemed legal witnesses within the meaning of the foregoing Act, enacts, that if any person shall attest the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest, or gift, or appointment of or affecting any real or personal estate, except charges on real estate, (for payment of debts,) such devise, &c. shall be void as respects such devise; and he shall be admitted as a witness.

21. Or if (sec. 3,) any legacy shall be given to a subscribing witness, (whether charged on real estate or not,) and before he gives his testimony, he “shall have been paid, or have accepted, or released, or shall have refused to accept, such legacy or bequest, upon tender made thereof,” he shall be a competent witness: Or if (sec. 5,) he should die before such acceptance or refusal, his attestation to the will shall be held valid: And (sec. 4,) in case of such acceptance of the legacy, he shall retain it whether the will is established or not; and in case of refusal, he shall be for ever barred. And shall not (sec. 7,) after having testified, receive the same, or any benefit thereof, or compensation therefor, on any pretence whatsoever.

22. And (sec. 2,) where any creditor whose debt is charged on the real estate is a subscribing witness, he shall be allowed to testify notwithstanding.

23. But (sec. 6,) the credit of every such witness, under all the circumstances of the case, shall be subject to the consideration of the Court or Jury as in other cases.

Sec. 8 and 9, relate to possession under, or contest of wills, previous to 6th May, 1751. Sec. 10 and 11 declare that the Act shall extend to any of the American colonies, where by Act of Assembly, or by usage the Statute, 29th Charles II. is received as law, or the attestation and subscription of witnesses are made necessary to the validity of devises of real estate.

Abstract of the 13th and 27th Eliz. against Conveyances to defraud Creditors and Purchasers.

24. The 13th Eliz. chap. 5th, for the protection of creditors, enacts, that every conveyance of real or personal estate by writing or otherwise, and every bond, suit, judgment, and execution, that shall be had or made to delay or defraud creditors and others of their debts and other rights, shall be void as against such creditors, &c. and them only. But that the Act shall not extend to any conveyance on good consideration, and bona fide to persons without notice of the fraud.1

25. The 27th Elizabeth, chap. 4,† for the protection of purchasers, enacts, that every conveyance of real estate, with the intent to defraud and deceive any person who previously or afterwards purchased the same, shall be void as against such other purchasers, and them only. But the Act shall not extend to any conveyance made for good consideration, and bona fide.1

26. And (paragraph 5,) if any person shall make any conveyance of real estate with any clause of future revocation or alteration thereof at his pleasure, and shall afterwards bargain or convey the same estate to any person for a good consideration (without revoking the first conveyance,) this first conveyance shall be void as relates to the said estate, and as against the second purchasers, and all claiming under them: Provided that no lawful mortgage made bona fide upon good consideration shall be affected by this Act.

1 For the words of these Statutes, which in their unmerciful verbiety exceed most Acts even of that period, see Bac. Abbr. Fraud. C. Roberts on Fraudulent Conveyances, 2, n. Schley's Digest.

IV. HABEAS CORPUS ACT.

Sec. 1. Preamble.  
Sec. 11. Where writ may run.

1. Whereas, great delays have been used by Sheriffs, Jailers, and other officers, to whose custody any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of habeas corpus to them directed, by standing out on alias and plurès habeas corpus, and sometimes more, and by other shifts to avoid the yielding obedience to such writs contrary to their duty, and the known laws of the land, whereas many of the King's subjects have been and hereafter may be, long detained in prison, in such cases where by law they are liable, to their great charges and vexation.

2. If. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters: Be it enacted, That whereas any person or persons shall bring habeas corpus directed unto any Sheriff or Sheriffs, Jailer, or other person whatsoever, for any person in his or her custody, and the said writ shall be served upon the said officer, or left at the jail or prison with any of the under officers, or of the said officers or keepers, or of the said officer or officers, his or their under officers, or of the said officers or keepers, within three days after the service thereof as aforesaid, (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment,) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the Judge or Court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be released by the Court or Judge to which he shall be brought according to the true intent of this present Act, and that he will not make any escape by the way, make return of such writ, and bring or cause to be brought the body of the party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the Great Seal of England for the time being, or the Judges or Barons of the said Court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such Court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days; and if beyond the distance of one hundred miles, then within the space of twenty days, after such delivery aforesaid, and not longer.

3. III. And to the intent that no Sheriff, Jailer, or other officer, may pretend ignorance of the import of any such writ: Be it enacted by the authority aforesaid, That all such writs shall be marked in this manner, Per statutum tricesimmo primo, Caroli Secundi, Regis, and shall be signed by the person that awards the same; and if any person or persons shall be or stand committed or detained as aforesaid for any crime, unless for felony or treason, plainly expressed in the warrant of commitment, in the vacation time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained, (other than persons convicted or in execution by legal process,) or any one on his or their behalf, to appeal or complain to the Lord Chancellor, or Lord Keeper, or any of his Majesty's Justices either of the one bench or the other, or the Barons of the Exchequer of the degree of the Coif; and the said Lord Chancellor, Lord Keeper, Justices or Barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy

*By the Statute of the thirty-first of King Charles the second.*
or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any of his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an habeas corpus under the seal of such Court whereof shall then be before the Judges, to be directed to the officer or officers in whose custody the party so committed or detained shall be returnable immediate before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron of the degree of the Lord Justice of any of the said Courts; and upon service thereof as aforesaid, the officer or officers, his or their under officer or under officers, under keeper or under keepers, or their deputy, in whose custody the party is so committed or detained, shall, within the time respectively before limited, bring such prisoner or prisoners before the said Lord Chancellor or Lord Keeper, or such Justices, Barons, or one of them, before whom the said writ is made returnable, and in case of his absence before any other of them, with the return of such writ, and the true causes of the commitment and detention; and thereupon, within two days after the party shall be brought before them, the said Lord Chancellor, or Lord Keeper, or such Justice or Baron, before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties in any sum, according to their discretions, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the Court of King's Bench the term following, or at the next assizes, sessions, or general jail delivery of and for such County, City or place, where the commitment was, or where the offence was committed, where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ, with the return thereof, and the said recognizance or recognizances into the said Court where such appearance is to be made; unless it shall appear unto the said Lord Chancellor or Lord Keeper, or Justice or Justices, or Baron or Barons, that the party so committed is detained upon a legal process, order, or warrant, out of some Court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the seal and seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such matters or offences, for which by law the prisoner is not bailable.

Persons neglecting two terms, not to have a bail. 4. IV. Provided always, and be it enacted, That if any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a habeas corpus for his enlargement, such person so wilfully neglecting shall not have any habeas corpus to be granted in vacation time in pursuance of this Act.

5. V. If any officer or officers, his or their under officer or under officers, under keeper or under keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner, or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver to the person so demanding a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly; all and every the head Jailer and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, shall for the first offence fine the officer or officers party guilty the sum of one hundred pounds, and for the second offence the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office; the said penalties to be recovered by the prisoner or party griev ed, his executors or administrators, against such offender, his executors or administrators, by any act of action, suit, bill, plaint, or information, in any of the King's Courts at Westminster, wherein no assize, protection, privilege, injunction, wages of law, or stay of prosecution, by non valt alterius prosequi or otherwise, shall be admitted or allowed, or any more than one imprisonment; and any recovery or judgment at the suit of any party gri v ed shall be a sufficient conviction for the first offence; and may after recovery, or judgment at the suit of a party griev ed for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

6. VI. And for the prevention of unjust vexation by reiterated commitments for the same offence: Be it enacted, &c. That no person or persons which shall be delivered or set at large upon any habeas corpus, shall at any time hereafter be again imprisoned or committed for the same offence by any person or persons whatsoever other than by the legal order and process of such Court, wherein he or they shall be bound by recognizance to appear, or other Court having jurisdiction of the cause; and if any other person or persons shall knowingly, contrary to this Act, recommit, or imprison, or knowingly procure, or cause to be recommitted or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of five hundred pounds; any colorable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

7. VII. Provided always, and be it further en-acted, That if any person or persons shall
APPENDIX.—HABEAS CORPUS ACT.

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Discharge if not tried—Civil cases—Removal to another prison—Denial of writ—For. prisons.

be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open Court the first week of the term, or the first day of the sessions of **Opem Terminus** general jail delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of **Opem Terminus** or general jail delivery, after such commitment: It shall and may be lawful to for the Judges of the Crown's Bench and Justices of **Opem Terminus** or general jail delivery, and they are hereby required, upon motion to them made in open Court the last day of the term, sessions or jail delivery, either by the prisoner or any one in his behalf, to set at liberty upon bail, unless it appear to the Judges and Justices, upon oath made, that the witnesses for the King could not be produced the same term, sessions or general jail delivery; and if any person or persons committed as aforesaid, upon his prayer or petition in open Court the first week of the term or the first day of the sessions of **Opem Terminus** and general jail delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of **Opem Terminus** or general jail delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.*

8. VIII. Provided always, that nothing in this Act shall extend to discharge out of prison any person charged in debt or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to law for such other suit.

9. IX. Provided always, *can be it enacted*, &c. That if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers, unless it be by habeas corpus or some other legal writ; or where the prisoner is delivered to the Constable or other inferior officer to carry such prisoner to some common jail; or where any person is legally cited of any Judge of Assize or Justice of the Peace, to any common house of work or house of correction; or where the prisoner is removed from one prison or place to another within the same County, in order to his or her trial or discharge in due course of law; or in case of sudden fire, or infection, or other necessity; and if any person or persons shall, after such commitment aforesaid, make out and sign, or counter-sign any warrant or warrants for such removal aforesaid, contrary to this Act, as well be that makes or signs, or counter-signs such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this Act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grievcd.

10. X. Provided also, *an be it further enacted*, &c. That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their habeas corpus as well out of the High Court of Chancery or Court of Exchequer, as out of the Courts of King's Bench or Common Pleas, or either of them; and if the said Lord Chancellor or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being of the degree of the Court, of any of the Courts aforesaid, in vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of habeas corpus by this Act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grievcd, the sum of five hundred pounds, to be recovered in manner aforesaid.

11. XI. An habeas corpus according to the true intent and meaning of this Act, Where the may be directed and run into any County palatine, the cinque ports, or other privileged places within this kingdom of England, dominion of Wales, or Town of Berwick upon Tweed, and the islands of Jersey or Guernsey, any law or usage to the contrary notwithstanding.

12. XII. And for preventing illegal imprisonments in prisons beyond the seas, Be it further enacted, &c. That no subject of this realm that now is, or hereafter shall be an inhabitant or resident of this kingdom of England, dominion of Wales, or Town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places beyond the seas, which are or at any time hereafter shall be within or without the dominions of his Majesty, his heirs, or successors; and that every such imprisonment is hereby enacted and adjudged to be illegal; and that if any of the said subjects now is or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment maintain by virtue of this Act an action or actions of false imprisonment, in any of his Majesty's Courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this Act; and against all or any person or persons that shall frame, contrive, write, seal, or counter-sign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising, aiding, or assisting in the same, or any of them; and the plaintiff in every such action shall ob*

The penalty for denying a habeas corpus.

The penalty for denying a habeas corpus.

No subjects shall be sent to foreign prisons.

See Penal Laws, sec. 311.
APPENDIX.—HABEAS CORPUS ACT.

Transportation—Trial of offences—Limitation—General issue—Accessories before the fact.

tain judgment to recover his treble costs, besides damages, which damages so to be given, shall not be less than five hundred pounds; in which action no delay, stay, or stop of proceeding by rule, order, or command, nor no injunction, protection, or privilege whatsoever, nor any more than one imprisonment shall be allowed, excepting such rule of the Court with respect to the action shall depend on the Peace in open Court, as shall be then in justice necessary, for special cause to be expressed in the said rule; and the person or persons who shall knowingly frame, contrive, write, seal, or countersign any warrant for such commitment, detainee or transportation, or shall so commit, detain, imprison, or transport any person or persons contrary to this Act, or by any ways advising, aiding, or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England, dominion of Wales, or Town of Berwick upon Tweed, or any of the islands, territories, or dominions therunto belonging; and shall incur and sustain the pains, penalties, and forfeitures limited, ordained and provided in and by the statute of provision and preeminence made in the sixteenth year of King Richard the Second; and be incapable of any pardon from the King, his heirs, or successors, of the said forfeitures, losses, or disabilities, or any of them.

13. XIII. Provided always, That nothing in this Act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall remove so contract.

14. XIV. Provided always, and be it enacted, That if any person or persons lawfully convicted of any felony, shall in open Court pray to be transported beyond the seas, and the Court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this Act, or any thing therein contained, to the contrary notwithstanding.

XV. [Fixes the commencement of the operation of the Act at the 1st day of June, 1679.]

15. XVI. Provided also, That if any person or persons at any time resident in this realm, shall have committed any capital offence in Scotland or Ireland, or any of the foreign plantations of the King, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making of this Act, any thing herein contained to the contrary notwithstanding.

16. XVII. Provided also, and be it enacted, That no person or persons shall be sued, impleaded, molested, or troubled for any offence against this Act, unless the party offending be sued or impleaded for the same within two years at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

17. XVIII. And to the intent no person may avoid his trial at the assizes or general jury delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there: Be it enacted, That after the assizes proclaimed for that County where the prisoner is detained, no person shall be removed from the common jail upon any habeas corpus granted in pursuance of this Act, but upon any such habeas corpus shall be brought before the Judge of Assize in open Court, who is thereby to do what is proper.

18. XIX. Provided nevertheless, That after the assizes are ended, any person or persons detained, may have his or her habeas corpus according to the direction and intention of this Act.

19. XX. If any information, suit or action shall be brought or exhibited against any person or persons for any offence committed, or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury as shall try the same, which matter being pleaded has had such good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit, or action, and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alleged the same matter in bar or discharge of such information, suit, or action.

20. XXI. And because many times persons charged with petty treason or felony, or as accessories thereunto, are committed upon suspicion only, whereupon they are bailable, or not, according as the circumstances making out that suspicion are more or less weighty, which are but known to the Justices of the Peace that committed the person, before the fact to petty treason or felony; may not be removed or bailed by virtue of this Act.
APPENDIX.—Judiciary Act of 1799.
Superior and Inferior Courts.

V. JUDICIARY ACT OF 1799.*


Sec. 1. The Superior Courts shall be held in each County in the respective districts Sup. Courts twice in every year, by one or more of the Judges of the Superior Courts. [The rest of this section superseded.]

Sec. II. The Inferior Courts shall be held twice in every year in each County, by the Justices of the said Inferior Courts, or a majority of them. [The rest of this section twice a year superseded.]

POWERS COMMON TO BOTH.

Sec. III. The said Superior and Inferior Courts, shall have full power and authority to hear and determine all causes both civil and criminal, of which they shall several of the Superior Courts shall have power to issue writs of habeas corpus; and in all cases to discharge, admit to bail, or remand to jail, any prisoner, according to their discretion and the law of the land; Provided, that in all cases of a capital nature where a writ of habeas corpus shall be issued by a Justice of the Inferior Court, it shall be necessary that one or more of the Justices of such Inferior Court shall associate with the Justice granting the same, at the return thereof, and a majority of such Justices shall concur in opinion on any decision or order aforesaid; and it shall be the duty of such Justices to attend, on one day’s notice being given of the time and place of the return of such writ.

PROCEDURE.

Sec. VIII. All suits of a civil nature cognizable in the said Courts respectively, shall be by petition to the Court, which petition shall contain the plaintiff’s charge, allegation or demand, plainly, fully and distinctly set forth, and be signed by the plaintiff, or his, her, or their attorney, and to which petition the Clerk shall annex a process, signed by such Clerk, and bear in the name of one of the Judges or Justices of such Court, directed to the Sheriff, requiring the defendant or defendants to appear at the Court to which the same shall be made returnable, and shall be served on the defendant or def-

*The plan of the Compiler compelling him to distribute this Act under various heads, he inserts it in full for those desiring thus to examine it.
APPENDIX.—JUDICIARY ACT OF 1799.

Executors and Administrators.

Corrected.

Sec. XIX. All process issued by the Clerks of the said Courts respectively, where the Sheriff who ought to execute the same, shall be any wise interested, shall be directed to the Coroner of such County, and served and returned by him in the same manner as is required of Sheriffs. And for the more orderly and regular proceeding in the said Courts, the following rules and methods shall be observed, to wit: The defendant or defendants shall appear at the Court to which the petition and process shall be returnable, and on or before the last day of the said Court shall make his, her, or their defence or answer in writing, which shall plainly, fully, and distinctly set forth the cause of his defence, and be signed by the party making the same, or his, her, or their attorney; which said answer may contain as many several matters, as such defendant or defendants may think necessary for his, her, or their defence: Provided, that no person shall be permitted to deny any deed, bond, bill, single or penal note, draft, receipt, or order, unless he, she, or they shall make affidavit of the truth of such answer at the time of filing the same. And the said petition and answer shall be sufficient to carry the same to the Jury, without any replication or other course of proceeding: And no petition, answer, return process, judgment or other proceeding in any civil cause, shall be abated, arrested, quashed or reversed, for any defect in manner of form, or for any clerical mistake or omission, not affecting the real merits of the cause; but the Court, on motion, shall cause the same to be amended without any additional cost at the first term, and shall proceed to give judgment according to the right of the cause and matter of law, as it shall appear to the said Court, without regard to such imperfections, in manner of form, clerical mistake or omission; and no dilatory answer shall be received or admitted, unless affidavit be made of the truth thereof.

Sec. X. Where any defendant shall fail to appear and answer in manner aforesaid, the Court, on motion of the plaintiff, or his counsel, shall enter a judgment by default, and the plaintiff's claim, allegation or demand, shall be tried in all cases of judgment by default, by a Jury; but no such trial shall in any case be had at the first term; and no cause whatsoever depending in the said Courts shall be continued more than one term, at the instance of the same party.

Sec. XI. In all cases where a suit shall be instituted in any of the said Courts on any bond, note, or other written obligation subscribed by several persons, who reside in different Counties, the plaintiff shall have his option to institute his suit in either of the said Counties, and the Clerk shall issue the original petition and process, and a copy or copies thereof to the defendant or defendants resident in the said Counties, at the suit of the plaintiff, or his counsel, and the plaintiff's claim, allegation or demand, shall be tried in all cases of judgment by default, by a Jury; but no such trial shall in any case be had at the first term; and no cause whatsoever depending in the said Courts shall be continued more than one term, at the instance of the same party.

Ex. and Ad. except from suit 12 mo. in counties.

Sec. XII. No suit or action shall be issued against any executor or administrator for any matter or cause against the testator or intestate of such executor or administrator in any of the said Courts, until the expiration of twelve months after probate of the will of such testator, or letters of administration, granted on the estate of such intestate.

Suit shall not abide by death of parties. Scire facias.

And no suit in any of the said Courts shall abate by the death of either party, where such cause of action would in any case survive to the executor or administrator, whether such cause of action would survive in the same, or any other form, but the same shall proceed as if such testator or intestate had not died, under the restrictions and regulations following: When a plaintiff shall die, in any case aforesaid, the executor or administrator of such plaintiff shall, within three months after taking out probate of the will, or letters of administration, give notice to the defendant or defendants by scire facias, to issue out of the Clerk's office, returnable in the manner herebefore prescribed for the issuing and return of process; and in cases where the defendant shall die, it shall and may be lawful for the plaintiff to issue a scire facias in manner aforesaid, im-
APPENDIX.—Judiciary Act of 1799.

Bail.—Mortgage on real estate.

mediate after the expiration of twelve months, requiring such executor or administra-
tor to appear and answer to the said cause. And where a feme sole, being plaintiff, shall marry pending any suit, the same shall not abate by reason of such intermarriage, but the same being suggested on the record, such cause shall proceed in the name of the husband and wife.

BAIL.

Sec. XIII. In all cases where bail is required, and the plaintiff in any action shall require bail, such plaintiff shall make affidavit before any judge, justice of the Inferior Court, or Justice of the Peace within this State, or any judge or Justice of a Superior Court of any one of the United States, shall have annexed thereto the seal of the State from whence it shall come, and a certificate of the Governor certifying that the person taking such affidavit is one of the Judges or Justices of a Superior Court of that State. And that he has reason to apprehend the loss of the said sum, or some part thereof, if the defendant or defendants is or are not held to bail, which affidavit shall be filed in the Clerk's office, and copies thereof affixed to the original petition and process, and to the copy or copies thereof, and the amount sworn to shall be endorsed on the petition and process.

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

Sec. XV. All bail taken according to the directions of this Act, shall be deemed, held, and taken as special bail, and as such be liable to the recovery of the plaintiff, but the plaintiff, after final judgment, shall not take out execution against such bail, until a capias ad satisfaciendum shall be first issued thereon, and the principal cannot be found, and shall also issue a scire facias returnable to the said Court, which shall be served on the bail at least twenty days before the return thereof; and after the return of such capias ad satisfaciendum against the principal, and seire facias against the bail, and judgment thereon, execution may issue against the principal and bail, or either of them, or either of their estates, unless the bail shall surrender the principal $1 or before entering up final judgment on the seire facias, either in open Court in term time, or to the Sheriff of the County in which such principal shall reside, at any time in vacation: And it shall be the duty of the Court to order such principal into the custody of the Sheriff, and the duty of the Sheriff in time of vacation to receive into his custody such principal, and in either case to commit him, her, or them to jail, according to the directions of this Act, any law, usage, or custom to the contrary notwithstanding.

Sec. XVI. [Directing the proceedings on scire facias against bail, repealed by Act of 1801, sec. 3. See Vol. II. 38.]

MORTGAGES ON REAL ESTATE.

Sec. XVII. The method of foreclosing mortgages on real estate, in this State be as follows: Any person applying and entitled to foreclose such mortgage, or his, her, or their attorney, shall petition the Superior Court of the County wherein such mortgaged property may be, stating the case, and the amount of his, her, or their demand, and describing such mortgaged property; and the Court shall grant a rule, that the principal, interest and cost shall be paid into Court, within twelve months thereafter, which rule shall be published in one of the public gazette of this State at least once in every month, until the time appointed for payment, or served on the mortgagee, or his special agent, at least six months previous to the time the money is directed to be paid; and if the principal, interest, and costs be so paid, the Court shall give judgment for the amount which may be due on such mortgage, and order the property mortgaged to be sold in such manner as is prescribed in cases of execution, and the money shall be paid to the mortgagee or his attorney; but where there shall be any
APPENDIX.—Judiciary Act of 1799.

Mortgages of personal property—Witnesses.

surplus, the same shall be paid over to the mortgagee or his agent. And in case of any default to the payment due on any mortgage, if the mortgager shall appear within the time prescribed by this Act, and make affidavit that he hath made payments which have not been credited on the said mortgage, or that he is entitled to set-off which in equity ought to be allowed, the Court shall appoint one or more fit person or persons to audit and liquidate the same; but either party shall be entitled to a new trial therefrom, which shall be tried in like manner as shall be prescribed for the trial of appeals in other cases.

Mortgages of personal property.

Sec. XVIII. Mortgages of personal property shall be foreclosed in the following manner: Any person or persons holding a mortgage on personal property, and wishing to foreclose the same, shall make application to one of the Judges of the Superior or Justices of the Inferior Courts, and make affidavit before him of the amount of principal and interest due on such mortgage, which affidavit shall be annexed to such mortgage, and thereupon the Clerk of the Superior or Inferior Courts shall cause execution as on a judgment, which execution being delivered to the Sheriff, it shall be his duty to levy on the property whereon the same shall be found, and after advertising the same in one or more of the public gazettes of this State at least sixty days, the Sheriff shall set up and expose the same to sale, and the money arising from such sale shall be first applied to discharge the amount due on such mortgage, and all legal costs, and the surplus, if any, to be paid to the mortgagor: Provided, always, that if any dispute shall happen as to the sum due on any mortgage, that it shall and may be lawful for the said Judge or Justices of the Inferior Courts, on affidavit, to order such sale to be postponed, the mortgagor giving bond, with good and sufficient security, in double the sum sworn to be due, for returning such property when called for by the Sheriff, which bond shall be assignable by the Sheriff to the mortgagor, who may sue and recover thereon; but the Jury shall be sworn to give at least twenty-five per cent. damages, in case it shall appear that such application was intended for delay only.

Witnesses.

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.

Subpoena 5 days before

Attachment for non-attendance, and liable to damages.

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 mortgagor at whose suit such witness shall have been summoned, for any damage which he, she or they may have sustained, by reason of such non-attendance.

Must attend till discharged.

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.

Their fees, and mode of payment.

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, off the goods and chattels of such party, in like manner as in cases of other executions. Provided nevertheless, that where any witness shall claim, and levy for more than is really due, such witness shall forfeit and pay to the party injured four times the amount of the sum so unjustly claimed. And no party cast in any suit shall be taxed for more than the cost of two witnesses to any material point in any 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 points.
APPENDIX.—JUDICIARY ACT OF 1799.

Sets-off and specialties—Verdicts and judgments.

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.

**Sets-off and specialties.**

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

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

**Verdicts and judgments.**

Sec. XXVI. In all cases where a verdict shall be rendered, the party in whose favor it may be, shall be allowed to enter and sign judgment thereon at any time within judgments of four days after the adjournment of the Court, at the Clerk's office, for the amount of such verdict and all legal costs recoverable thereon, and no execution shall issue on any verdict until such judgment shall be entered, signed by the party or his attorney; and all the property of the party against whom such verdict shall be entered, shall be bound from the signing of the first judgment; but where several judgments shall be of equal date, the first execution delivered to the Sheriff shall be the first satisfied: Provided always, that any party against whom such verdict shall be entered, may enter good and sufficient security, either in open Court or in the Clerk's office, within the time aforesaid, for the payment of the judgment and costs within sixty days; and if such party shall not pay the same agreeably thereto, execution may issue against such party, and the security, without any other proceeding thereon: And provided also, that in case either party shall be dissatisfied with the verdict of the Jury, then, and in all such cases, either party may, within four days after the adjournment of the Court in which such verdict was obtained, enter an appeal in the Clerk's office of such Court (as matter of right); and if such verdict shall be obtained in the Inferior Court, it shall be the duty of the Clerk thereof to transmit such appeal to the Clerk of the Superior Court of the County in which such verdict shall be obtained, who shall enter the same on the appeal docket, which appeal shall be admitted and tried by a special Jury. Provided, the person or persons so appealing shall, previous to obtaining such appeal, pay all costs which may have arisen on the former trial, and give security for the eventual condemnation money, except executors and administrators, who shall not be liable to give such security; but if, on hearing such appeal, it shall appear to the Jury that the appeal was frivolous, and intended for delay only, they shall assess damage to the party aggrieved by such delay, not exceeding twenty-five per centum on the principal sum which they shall find due; and such damages as shall be so assessed, shall be specially noted in the verdict of such Jurors, and no person shall be allowed to withdraw an appeal after shall be entered but by the consent of the parties. And in case of a Jury committing a contempt, or breaking up before giving in their verdict in any civil case, the Court may declare the same a mis-trial, and shall fine each of the offending Juror or Jurors in a mis-trial, sum not exceeding one hundred dollars. And if any party, plaintiff or defendant, be hereafter non-suited or cast, by reason of the neglect or misconduct of the attorney who shall hereafter bring or be employed in such suit, in all cases the said attorney shall pay all costs that may accrue thereby, and the Court shall immediately enter up judgment accordingly for the same.

Sec. XXVII. No confession of judgment shall hereafter be entered up, but in the County where the defendant or defendants may reside, or unless the cause hath been of judgment.
regularly sued out and docketed in the usual way as in other cases, nor until such cause
be called in order by the Court for trial.

Sec. XXVIII. No verdict shall be received on any unliquidated demand where the
Jury have increased their verdict on account of interest, nor shall interest be given on
any open account, in the nature of damages.

Sec. XXIX. [Superseded by Act of 1812.]

ARRBITRATION.

Sales by execution.

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

EXECUTIONS.

Sale of live stock.

Sec. XXXI. [Respecting executions—superseded.]

Sec. XXXII. In all cases where execution shall issue illegally, and the person against
whom such execution may be shall make oath thereof and shall state the causes of such
illegality, such Sheriff shall return the same, with the name of the Court out of which
the same issued, which Court shall determine thereon, at such time. [The residue of this
section relates to claims, and is superseded by the Act of 1821.]

Sec. XXXIII. No sales in future shall be made by Sheriffs of property taken un-
der execution, but on the first Tuesday in each month, and between the hours of ten
and three in the day; and it shall be the duty of the Sheriffs to give thirty days' no-
tice in one of the public gazettes of the State, of all sales of lands and other property
executed by him, and also advertise the same in the notice to be made in the places in
the County where such sales are to be made, and shall give a full and complete description
of the property to be sold, making known the name of the defendant, and the person
who may be in possession of the property, except horses, hogs and cattle, which
may be sold at any time by the consent of the defendant; and in which case it shall be his
duty to give the plaintiff ten days' notice thereof, and also to advertise the same in three
or more of the most public places in the County where such property may be, at least
ten days before the sale.

CLERKS.

Sec. XXXIV. The Clerks of the several Courts in this State shall copy into a book
of record, all the proceedings in all civil cases in the said Courts, respectively, which
entry of record shall be made within forty days after the determination of any cause;
and the said Clerks shall be allowed the sum of ten cents for each hundred words
of record of such proceedings, to be taxed in the bill of cost. And the said Clerks shall
also keep regular and fair minutes of all the proceedings in any of the said Courts,
which shall be signed by the Judge of the Superior, or presiding Justices of the Inferi-
or Courts, as the case may be) prior to the adjournment from day to day.

Sec. XXXV. The Clerks of the said Superior and Inferior Courts, hereafter to be
appointed, shall, before they enter upon the duties of their appointments, and after be-
ing commissioned by the Governor, take the following oath before one of the Judges of
the Superior Courts, or a Justice of the Inferior Court of the County: "I do solemnly
swear (or affirm) that I will truly and faithfully enter and record all the orders, de-
crees, judgments, and other proceeding of the Superior (or Inferior) Court of the County of
—, and all other matters and things which by law ought by me to be recorded, and
that I will faithfully and impartially discharge and perform all the duties required of me,
to the best of my understanding." And shall also enter into bond with one or more good
and sufficient security or securities, to the Governor for the time being, in the sum of
$4,000, conditioned for the faithful discharge of the duties required of them: And the
said Clerks shall be in virtue of their offices be Justices of the Peace, so far as to administer
all oaths appertaining to the business of their office.

Sec. XXXVI. No Clerk of a Court or other person employed in his office, shall act
as attorney in his own name, or the name of any other person, or be allowed to plead
or practice in such Courts, during the time he shall be employed in such office: And
no one person may be Clerk of the Superior and Inferior Court of the same County:
Provided, that nothing herein contained shall extend to proscribe any officer of the Court
in prosecuting or defending any suit to which he is a party.
APPENDIX.—Judiciary Act of 1799.

Law department—Juries.

LAW DEPARTMENT.

Sec. XXXVII. It shall be the duty of the States' Attorney and Solicitors, or one of them, to prosecute all delinquents for crimes and other offences, cognizable by the said Courts, and all civil actions in which this State shall be concerned, and to give advice or opinion in writing, to his Excellency the Governor, in questions of law in which the State may be interested. And in case it should so happen, that neither the State's Attorney or Solicitors, or either of them, can attend the said Courts, then the Judge presiding may, and he is hereby authorized and required, to appoint some attorney at law to prepare and prosecute the indictment of other business of the State; and such person so appointed shall be entitled to the same fees and emoluments therein, as the State's Attorney or Solicitors would have been entitled to.

JURIES.

Sec. XXXVIII. All free male white citizens above the age of twenty-one years, whose qualification is not less than sixty, are declared to be qualified and liable to serve as Petit Jurors, on the trial of all civil causes for recovery of debts or damages, to any amount whatsoever; but no person shall be qualified to be of a Jury for the trial of treason, felony, breach of the peace, or any other cause of a criminal nature, or of any estate of freedom, or of the right or title to any lands or tenements, in any Court of Record within this State, who shall not be qualified to vote at elections for members of the Legislature; and if any person so qualified and qualified, shall be returned on any Jury, he shall be disqualified from the challenge and proof thereof, of either or both parties to such suit, or on his own oath, of the truth thereof: Provided, that no exception against any Juror, on account of his qualification, shall be allowed after he is sworn.

Secs. XXXIX. and XL. [Directing the mode of selecting and drawing Jurors, superseded by Act of 1805.]

Sec. XL. No Grand Jury shall consist of less than eighteen or more than twenty-three; but twelve may find a bill or make a presentment. [The rest of this section is underscoring.]

Sec. XII. The Clerk of the Court shall annex a pannel of the Jury, containing the names of the persons drawn to serve on the Grand Inquest, exactly transcribed from the minute-book to the precept for summoning such Grand Jury; and shall also annex another pannel containing the names of the persons drawn as Petit Jurors for the trial of civil and criminal cases, exactly transcribed as aforesaid, to the precept for summoning the Petit Jurors, in the mandatory part of which precept shall be written the words following, viz.: "The several persons named in the pannel hereto annexed, which precept, with the several pannels annexed as aforesaid, shall be delivered by the Clerk of the Court within three days after the drawing of such Juries as aforesaid, to the Sheriff of the County or his deputy.

Sec. XLIII. The Sheriff or his lawful deputy, for the time being, upon the receipt of any precept for summoning Grand or Petit Jurors, shall cause the several persons whose names are written in the pannel heretofore annexed, to be served with a summons, and either the Grand or Petit Juror, for which they are drawn and impannelled; which summons shall be in the following words, or words to that effect: "By virtue of the precept to me directed, you are hereby commanded to appear before the Grand Jury Court, at the next Superior Court, to be held at the Court-house in and for the County of—, on the __ day of ____, at ten o'clock in the forenoon of that day, to be sworn on the Grand Jury (or as a Juror for the trial of civil and criminal causes) then and there depending, as the case may be:"

Sec. XLIV. The Clerk of the Court shall make an entry in the minute-book of such Court of the appearance of all Jurors, and shall likewise enter and make report of the names of all such as shall make default in appearing; that if any person who shall be drawn, impannelled, summoned and returned to serve as Jurors at any Court as aforesaid, shall neglect or refuse to appear, or after appearance shall refuse to serve, or shall absent himself without leave of the Court, then and in that case, it shall be lawful for the Court to fine such person, if a Petit Juror, in a sum not exceeding twenty dollars, and if a Grand Juror, in a sum not exceeding forty dollars, unless such Juror shall show good and sufficient cause of excusing him from being on oath before any Justice of the Peace, and filed in the Clerk's office of such Court, within thirty days after opening the said Court; the merits of which excuse shall be determined by the next succeeding Court; and when from challenge or otherwise there shall not be sufficient number of Jurors to determine any civil or criminal cause, the Court may order the Sheriff or his Deputy, to summon by-standers or others, qualified as hereinbefore required, for the trial of such cause or causes, sufficient to complete the pannel; and when the Sheriff or his Deputy
are disqualified from acting in the manner herein expressed, Jurors shall be summoned
by the Coroner, or such other disinterested person as the Court may appoint.

Sec. XLV. The oath to be administered to Petit Jurors in civil cases shall be in the
form following: "You, (A, B,) shall well and truly try the cause depending between
the parties at variance, and a true verdict give according to evidence: so help you God."

SHERIFFS.

Sheriffs, their duty. Sec. XLVI. The Sheriffs of the several Counties shall attend the Superior and In-
ferior Courts in the respective Counties when sitting, and by themselves or Deputies,
except throughout the Counties all writs, warrants, precepts and processes directed to
them, issued under the authority of any Judge or Justice of the said Superior or Inferi-
or Courts, or the Clerk of either of the Courts; and the said Sheriffs or their Deputies
shall have power to command all necessary assistance in the execution of their
duty, and to appoint, as there shall be occasion, one or more Deputies; and before any Sher-
iff shall enter upon the duty of his appointment, and being commissioned by the Gov-
ernor, he shall be bound for the faithful performance of his duty, by himself and his Dep-
uties, as in the cause aforesaid, to the performance of the duties of the said Sheriffs,
and to his successors in office, jointly and severally, with two good and sufficient secur-
ities, inhabitants and freeholders of the County, to be approved of by the Justices of the
Inferior Court, or any three of them, in the sum of $20,000, and the said bond shall re-
main in the office of the Clerk of the Superior Court of such County, and may be sued
for by order of the said Court, for the satisfaction of the public or persons aggrieved
by the misconduct of the Sheriff or his Deputy; and the said Sheriff shall take and sub-
scribe the following oath, before one of the Judges of the Inferior Court, and the same shall
be entered on the minutes of the said Court, before such Sheriff shall enter on the duties of his office, to-wit: "I do solemnly swear (or affirm as the case may be) that I will faithfully execute all writs, warrants, precepts and processes,
directed to me as Sheriff of the County of ——, and true returns make, and in all
things well and truly, and without malice or partiality, perform the duties of the office
of Sheriff of ——, during my continuance in office, and take only my lawful fees; so
help me God." And an oath to the same purport shall be taken by each of the Deputies
of the said Sheriff in like manner.

Sec. XLVII. In case of the death of either of the said Sheriffs, the Deputy or Deputies
shall continue in office, unless otherwise specially removed, and execute the same in the
name of the deceased, until another Sheriff be appointed and qualified; and the defaults
and misfeasance in office of such Deputy or Deputies in the mean time, as well before
as after the death of such Sheriff, shall be adjudged a breach of the condition of the bond
given as before directed, by the Sheriff who appointed such Deputy or Deputies; and the
executor or administrator of the deceased Sheriff, or the Sheriff of the said County, shall
execute, conduct, or misfeasance, or default in office of such Deputy or Deputies, during such in-
tervals, as he would be entitled to if the Sheriff had continued in life, and in the execu-
tion of his office, until his successor was appointed and sworn.

Sec. XLVIII. The Sheriff of each County shall, at the expiration of his appointment,
turn over to the succeeding Sheriffs, by indenture and schedule, all such writs and pro-
cesses as shall remain in his hands unexecuted, who shall duly execute and return the
same, and send in order the schedule of such unexecuted writs and processes, as shall be
therein directed; and if any such Sheriffs so neglecting or refusing, shall be liable to make such satis-
faction, by damages and costs, to the party aggrieved, as he, she, or they shall sustain by
reason of such neglect or refusal; and every Sheriff, at the expiration of such his ap-
pointment, shall also deliver up to his successor the custody of the jail, and the bodies
of such persons as shall be confined therein, with the precepts, writs or causes of such
detention; and such succeeding Sheriff shall be empowered and required to sell and
carry into effect any levy made by his predecessors in office, in like manner as the suc-
ceeding Sheriff could have done, had he continued therein, and shall make titles or the purchas-
ers for all the property sold under execution, and not conveyed by his predecessor.

Sec. XLIX. The Sheriffs of the several Counties in this State shall have like powers
and authorities, and they, and their under Sheriffs and Jailers, Constables and other offic-
ners belonging to the Court be liable to all actions, suits, penalties and disabilities whatsoever,
which they or either of them may incur for or on account of the escape of prisoners,
or for or in respect of any other matter or thing whatsoever, relating to or concerning
the respective offices, in the same manner as they have heretofore been liable by law,
in force in this State; and no Sheriffs, under Sheriffs. Deputy or other Sheriff's officer
shall act as an attorney at law, in his own name or in the name of any other person,
or be allowed to plead or practice in any of the Courts of this State, during the time he is
in such office.

Sec. L. The Sheriff shall be liable either to an action on the case, or an attachment
for contempt of Court, at the option of the party, wherever it shall appear that he hath in-
curred to such party, either by false returns, or by neglecting to arrest the defendant, or
to levy on his property, or to pay over to the plaintiff or his attorney, the amount of any
sales which shall be made under or by virtue of any execution, or any moneys collected
by virtue thereof.
APPENDIX.—Judiciary Act of 1799.

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Special powers of Superior Courts.

Sec. LI. If any Sheriff, or his Deputy or under Sheriffs, shall be guilty of extortion or other malpractice in the execution of his office, upon complaint made on oath to the State's Attorney or Solicitor, it shall be the duty of such attorney or solicitor to exhibit a bill of indictment against the person so offending, who, upon conviction thereof, shall be fined by the Court in treble the amount which he may have extorted from any person, which shall be applied, one moiety to the injured person, and the other moiety to the use of such County, and shall likewise be removed from office, and suffer such other punishments as the law directs.

Sec. LII. Whenever the Sheriff of any County within this State shall fail to make proper return of all writs, executions and other process put into his hands, or shall fail or neglect to pay all moneys received on such executions, on his being required by the Court so to do, he shall be liable to an action for conversion, and may be fined, imprisoned or removed from office, in the manner prescribed by the Constitution.

SPECIAL POWERS OF SUPERIOR COURTS.

Sec. I. The Superior Courts in the several Counties shall exercise the powers of a Court of Equity, in all cases where a Common Law remedy is not adequate to compel parties in any cause to discover on oath all requisite points necessary to the investigation of truth and justice, to discover transactions between co-partners and co-executors, to compel distribution of intestate estates, and payment of legacies, to discover fraudulent transactions for the benefit of creditors, and the proceedings in all such cases shall be by bill, and such other proceedings as are usual in such cases, until the sitting down of the cause for trial; and the Courts shall order the proceedings in such manner as shall be ready for trial at furthest at the third term from the filing such bill inclusive, unless very special cause be shown to induce the Court to continue the same, which shall not extend to more than four terms; and all such bills shall be read and sanctioned by one of the Judges of the Supreme Court, or their copy thereof served on the opposite party at least thirty days before the filing of such bill in Court; and the party against whom such bill shall be filed, shall appear and answer to the same at the next Court; and if he, she, or they shall fail to do so, the facts in the said bill shall be taken pro confessione, and the Court may proceed to decree as to justice shall appertain.

Sec. LIV. Where either party in any cause in any Inferior Court shall take exceptions to any proceedings in any case affecting the real merits of such cause, the party making the same shall offer such exceptions in writing, which shall be signed by himself, or his attorney; and if the same shall be overruled by the Court, it shall and may be lawful for such party, on giving twenty days' notice to the opposite party or his attorney, to apply to one of the Judges of the Superior Court, and if such Judge shall deem the said exceptions to be sufficient, he shall forthwith issue a writ of certiorari, directed to the Clerk of such Inferior Court, requiring him to certify and send up to the next Superior Court, to be held in the said County, all the proceedings in the said cause, and at the term of the Superior Court to which such proceedings shall be certified, the said Superior Court, and order the proceedings to be dismissed, or return the same to the said Inferior Court with order to proceed in the said cause.

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

Sec. LVI. [Oath of the special Jury, repealed.] Special Jury List of the County. New trials.

Sec. LVII. In any case which has arisen since the signing of the present Constitution, or which may hereafter arise, of a verdict of a special Jury being given contrary to evidence and the principles of justice and equity, it shall and may be lawful for the Judge presiding to grant a new trial before another special Jury, in the manner prescribed by this Act: Provided, that twenty days' notice be given by the party applying for such new trial to the adverse party of his intention, and the grounds of his application, made in writing, and the said Judge shall in all cases of application for new trials, or correction of errors, enter his opinion on the minutes of the Court for his determination on each respective case.

Sec. LVIII. All new trials shall be had by a special Jury, to be taken from the Grand Jury list of the County.

Sec. LIX. [The first part of this section, directing the annual convention of the Judges, repealed, Vol. II. 38, and in part re-enacted in 1821.] New trials. And liable to indictment for malpractice.

Sec. LX. [Judges shall alternate—superseded.] Shall correct errors and grant new trials.

Sec. LXI. The Act entitled "an Act to revise and amend the Judiciary system of Repealing this State," passed at Louisville, on 9th February, 1797, from the first to the 67th clause inclusive be, and the same is hereby repealed, saving in favor of suits already commenced.

No Justice of the Peace shall sustain or try any satisfaction in damages for any trespass on the person or property of such plaintiff.