A COMPILATION
OF THE
GENERAL AND PUBLIC
STATUTES
OF
THE STATE OF GEORGIA;
WITH THE
FORMS AND PRECEDENTS
NECESSARY TO THEIR PRACTICAL USE.
AND
An Appendix
CONTAINING THE NATURALIZATION LAWS; THE CONSTITUTIONS OF THE UNITED STATES AND OF GEORGIA, AND THE RULES OF PRACTICE.

By Howell Cobb.

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HOWELL COBB,
In the Clerk's Office of the District Court for the Southern District of Georgia.
TO THE
MEMBERS OF THE GEORGIA BAR,

This Work
is

VERY RESPECTFULLY INSCRIBED

BY ITS

AUTHOR.
REPORT OF THE COMMITTEE.

To His Excellency Joseph E. Brown,

Governor of the State of Georgia.

Sir,—Having been appointed by your Excellency, in pursuance of a Resolution of the General Assembly of this State, assented to December 11, 1858, to examine the Compilation of Statutes, with Forms, prepared by Howell Cobb, Esq., of the County of Houston, we now report to your Excellency, that we have carefully and minutely examined the Manuscript-copy of the entire Work referred to. This Work embraces all the Statutes of this State, of general interest, including the acts of the last session of the Legislature, and has various appropriate and convenient Forms, arranged under the Statutes to which they apply. We have no hesitation in reporting to your Excellency, the correctness, and the faithful execution of this Work, and that in our opinion it will not only be larger than the former Work of Col. Cobb, styled "Analysis and Forms," but it will be superior to it, in comprehensiveness, arrangement, and accuracy.

Respectfully, your obedient servants,

JOHN M. GILES,
THOMAS P. STUBBS,
JAMES A. PRINGLE.

June 24, 1859.

EXECUTIVE ORDER ON THE ABOVE REPORT.

Executive Department, Milledgeville, Georgia,

July 5th, 1859.

The Committee appointed to examine the new Compilation of the Statutes of this State, and Forms, prepared by Howell Cobb, Esq., of Houston County, having reported to me, that the Work is correctly and faithfully executed; I do, therefore, in compliance with the Joint Resolution, passed by the last General Assembly of this State, hereby subscribe for, and order, three thousand Copies of said Work, for the use of this State, to be paid for on delivery, at five dollars per Copy; upon which said subscription, an advance of three thousand dollars is this day made.

JOSEPH E. BROWN,
Governor.
Of all the secular pursuits in which men engage, there is not one better calculated to chasten the mind and impress it with correct and elevating sentiments, than the Law. The study of some of the sciences, that of Geology, for instance, is calculated sometimes to embarrass, sometimes to confuse the mind. Geology cannot harmonize its own discoveries with the inspired account of the Creation, and, therefore, causes the mind to doubt, perhaps to disbelieve. To him who is accustomed to look below the surface of things, and make his investigations philosophically, this only shows, (no matter what the pretensions may be,) either that the science itself is not perfectly understood, or has in it radical imperfections. The noble science of Law has connected with it no such embarrassing characteristics; on the contrary, it is relieved from all such difficulties, for it accepts the Divine account as matter of Faith; in other words, it recognizes the imperfection of all human knowledge. It is a simple fact, that from a Law Library may be arranged as complete a Code of Morals, and as perfect a Creed of Christian Faith, as would be satisfactory to the most exacting Professor of Religion, or the most orthodox Christian Church; therefore no Lawyer properly imbued with the teachings of his Profession, can be an Infidel or a Skeptic.

There are certain qualifications necessary to constitute a scientific Lawyer, to which we propose here briefly to allude; these qualifications are both natural and acquired.—First, the person who intends to follow the Law as a Profession, must have, at least, a fair share of intellectual ability—capacity. No greater mistake can be made than to suppose that any man can become a Lawyer—there are, comparatively, but few who can make such an attainment. There are many pre-requisites necessary to qualify a good Lawyer; and if a person possess, in abundance, all the others, and be deficient in capacity, he had better turn his attention to some other employment, for he never will be able to arrive at distinction in this. Secondly, Cast of Mind. Supposing the person to be possessed of sufficient capacity, yet if the mind be without the proper bias, turn, taste for philosophical research, patience to plod through the most exhausting
and apparently, useless drudgery and toil, he cannot succeed. "Thirdly, admitting the possession of capacity and taste for the Law, the next qualification to which we refer, is that of Education. The Education must be, at least, good; it should be collegiate and scientific. The Law is full of technicalities; these are expressed mostly in Greek, Latin, and French; therefore, it is easy to see that if the student has not a tolerable knowledge of these languages, he cannot become familiar with these terms, and consequently, never can be a scientific Lawyer. "Fourthly, Application. The student must consent to labor, for years, sleeplessly, untiringly, continuously; the task is difficult, hard, but let him not be discouraged, for the reward bestowed is equivalent to the labor required—let him persevere, for when the day of triumph comes, as it assuredly will, it will leave nothing to be desired.

There is no qualification more indispensable to a Lawyer, than good Moral Character—his Profession teaches, and the public demand this. Moral Character is settled by practices—habits, and therefore depends upon the individual himself. If a Lawyer be seen in places where he ought not to be seen, and be known to indulge in practices incompatible with the strictest Morality, he at once drops below the dignity of his Profession, and sinks in public esteem. Nor does he meet the full amount of the obligations which are upon him, by abstaining from vicious and debasing practices alone, he must possess positive traits of character, which are not only unmistakable, but which always, everywhere, leave their impress. He must love justice; be careful to do no wrong; be easily appeased; ready to forgive; generous to the needy; kind to the poor; in a word, high-toned and magnanimous in all his deportment.

Another trait in a well-balanced character may here be stated. A perfect Lawyer must possess a sufficient knowledge of our Holy Religion to understand its requirements, and to acknowledge its obligations; the position which he occupies in society requires this. What does it signify that Toland, Bolingbroke, Morgan, Chubb, Gibbon, Hume, Voltaire, and many of their confrères possessed commanding talents, brilliant intellects? While the literary labors of some of them are acknowledged to be valuable, the want of proper respect for Religion assigns to them a place, in the estimation of the virtuous and the good, that is by no means enviable. These truly great men, (in a literary sense,) employed their intellectual powers in the most mischievous of all causes—the cause of infidelity. What position do they now occupy in the estimation of the intelligent world? The race to which they belonged would have been better off had they never lived, and every succeeding day adds to the degradation which attaches to the character of each. Infidelity and skepticism ever envelop their votaries in blight and mildew.

There is no one qualification necessary to command success at the bar more important than that of oratory; therefore, to speak well—eloquently, should be the constant aim of the student. To accomplish this, he may
have to accustom himself to the most rigid discipline. To some extent, the power of oratory is natural, but most of the qualifications necessary to a perfect orator may be acquired. In illustration of the idea which we here wish to present, we refer to the case of Demosthenes. Speaking of this great orator, Rollin says: "He had a weak voice, a thick way of speaking, and a very short breath; notwithstanding which, his periods were so long that he was often obliged to stop in the middle of them for respiration; this occasioned his being hissed by the whole audience. He ventured to appear a second time before the people, and was no better received than before." This would seem to be sufficient to overwhelm the most courageous; but Demosthenes found a friend in Satyrus, who, perceiving his merit through his failures, came forward with those advices which were calculated to re-assure him, and which resulted in his complete success. "His efforts to correct his natural defect of utterance, and to perfect himself in pronunciation, (the value of which his friend had made him understand,) seem almost incredible, and prove that industrious perseverance can surmount all things. He stammered to such a degree that he could not pronounce some letters—among others, the first in the name of the art he was studying, rhetoric; and his breathing was so short that he could not utter a whole period without stopping. He overcame these obstacles, at length, by putting small pebbles into his mouth, and pronouncing several verses in that manner, without interruption, while walking and going up steep and difficult places, so that at last no letter made him hesitate, and his breath held out through the longest period. He went, also, to the sea-side, and while the waves were in the most violent agitation he pronounced harangues, to accustom himself, by the confused noise of the waters, to the roar of the people and the tumultuous cries of the public assemblies. He took no less care of his action than of his voice: he had a large looking-glass in his house, which served to teach him gesture, and at which he used to declaim before he spoke in public. To correct a fault which he had contracted by an ill habit of continually shrugging his shoulders, he practised standing upright, in a kind of very narrow pulpit or rostrum, over which hung a halberd, in such a manner that if, in the heat of action, that motion escaped him, the point of the weapon might serve, at the same time, to admonish and correct him." After Demosthenes had "carried the art of declaiming to the highest degree of perfection of which it was capable," and "when he was asked, three several times, which quality he thought most necessary in an orator, he only answered pronunciation, and, by making that reply three times successively, insinuated that that qualification was the only one the want of which could be least concealed, and which was the most capable of concealing other defects; and that pronunciation alone could give considerable weight, even to an indifferent orator, when without it the most excellent could not expect the least success." No one need be told that the civic triumphs of Demosthenes were more brilliant, lasting and
valuable, than the military achievements of the distinguished pupil of Aristotle: while the triumphs of the one are traditionally familiar, to become acquainted with the deeds of the other we must resort to the libraries of the learned. The student should study well the character of this unequalled Declaimer; and, although frequent failures may mark his first efforts, let him not become discouraged, for success will finally reward perseverance. After all, he may not become a Forsyth, a Berrien, a Lumpkin; usefulness, success, distinction, does not require that he should.

The Practice of the Law brings with it many Professional Obligations, and if much care be not observed, the desire for success will betray the young Practitioner into the non-observance of these engagements. Success in the Practice is very desirable, very enchanting; and will mislead the beginner if he be not very careful; therefore, he should be ever awake to Professional accountability, and preserve it inviolate; remembering that nothing can excuse, palliate, or justify, its violation. Professional engagements, although difficult to specify, will present themselves, at every turn, in the Practice—they are properly met by a liberal and high-minded course of conduct.

A Judge of Law.—It becomes us to speak guardedly of the character and qualifications of a Judge, because we may not have a proper conception of this character, and these qualifications. He should, we think, be kind and conciliating—for in the discharge of his duties, he will find many occasions which will require the exercise of the tenderest sensibilities of human nature—if, on the contrary, he be overbearing and tyrannical, no talents, however brilliant, no learning, however varied and extensive, can justify the act of trusting him with power. He should be patient; without patience, as a marked trait of character, it is impossible to have the qualifications which should distinguish a Judge. A Judge should be patient to hear all that can be said, which would lead to the discovery of truth—he should be indulgently patient with one accused of crime. He should be distinguished for firmness; we do not mean unreasonable obstinacy, but intelligent firmness, so that after having heard patiently he may decide properly and maintain the decision firmly, no matter how far it goes, should it extend even to the forfeiture of human life. A Judge should be eminent for legal learning, distinguished for his attachment to the profession, and remember that it requires the constant study, the profoundest thinking of the longest life, to become a proper administrator of the law.

When the writer was a much younger man than he is now, he had the weakness to suppose that he could administer the law as a Judge; experience has served to convince him that he was not only not qualified then, but that he is not qualified now, for the discharge of the duties of this high and very responsible office.

The Author has inscribed this volume to the members of the Georgia
PREFACE.

Bar; the only embarrassment he feels in doing this, arises from the fact that the offering is not more worthy of the acceptance of those to whom it is made.

More than thirty years have gone into the past, since the Author was admitted to the Practice of the Law; at the time of his admission he was without either fortune or friends, but his poverty and obscurity did not operate against him; his admission is to be attributed more to the generosity of the fraternity with which he sought association, than to his preparation for it. During the whole of this period, the unabated kindness of his Professional Brethren has been manifest; it has served to cheer and encourage him in many of the uncertain and arduous struggles which have crowded a very laborious life; and his success (if he has attained success) is due, very much, to that kindness. He feels no difficulty in saying, that should misfortune overtake him, and he become incapable of labor, it is to the Members of the Bar he should apply for relief.

EXPLANATION.

The principal difficulty with which the Compiler has had to contend in the preparation of this work was, that if much care were not taken, it would be too large; he has, therefore, been compelled to omit much, which under other circumstances, he would gladly have included. A reference to the decisions of the Supreme Court was very desirable, but to do this would be to encounter the very difficulty which it was absolutely necessary to avoid.

No Statutes are included but such as are general and public; these have been transcribed from the authorized publications. Whenever the Compiler has discovered an error, (affecting the sense and meaning of the Statute,) he has suggested the correction; these corrections will be ascertained by their being inserted between brackets, in italic letters, thereby leaving the statute in its original form.

The numbering commences with the chapter and is continued throughout it. This directs the attention from the provisions of one Statute to those of another, on the same point.

Nothing assists more in arriving at the correct meaning of a sentence, otherwise ambiguous, than proper punctuation. Almost every writer adopts a plan peculiar to himself; the Compiler has followed this rule, in the preparation of this work; he indulges the hope that his plan will answer the object it was intended to secure.

Explanatory and Marginal Notes have been used. The Marginal Note expresses the meaning of the section of the Statute, opposite to which it is found. The Explanatory Notes, (in the body of the work,) generally, direct the Officer how his duty is to be performed; they are intended to make plain what otherwise, in some instances, might be perplexing.

The Forms and Precedents presented, are deemed sufficient, and although
the experienced practitioner may have no need of them, yet the young practitioner, the ministerial officer, and the people at large, may sometimes find them useful.

This volume is the result of the labor of years; it has been submitted, while in manuscript, to the revision of a committee appointed by Governor Brown, in accordance with a resolution of the Legislature of 1858. To these gentlemen is to be attributed much of the accuracy of the work. The intercourse between these gentlemen and the Compiler has been constant and agreeable, and, to him, interesting and profitable.

The Compiler cannot permit this occasion to pass without expressing to the Members of the Bar, and the people at large, his gratitude for the kind and indulgent manner in which a former publication, (Analysis and Forms, which this is intended to supersede,) has been received, and bespeaking for this their approval.

If this volume, unpretending as it is, shall answer the purposes for which it was prepared, the object of the Compiler will be realized, and he will be content.

Perry, Sept., 1859.
CHAPTER I.

JUDICIARY.

SUPREME COURT.

An Act to carry into effect that part of the first section of the third article of the Constitution, which requires the establishment of a Supreme Court for the Correction of Errors; and to organize the same; and to regulate the proceedings thereof.—Approved December 10, 1845.

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

2. Sec. III. It shall be the duty of all the judges of said court to attend at each term of said court; but if, from providential cause, any one of said judges cannot attend a court, such court may be holden by two judges. If only one judge shall attend a court, it shall be his duty to open the court, and to adjourn it to a day not more than two days beyond the regular term, at which time, if two judges do not attend, the court shall in that case be adjourned to the next regular term.

3. Sec. IV. The supreme court shall hear and determine, at the first term of each court, all such cases in law and equity as may be brought from any of the superior courts of this State within the district, as created by this act, for which said supreme court is holden. All causes of a
JUDICIARY.—SUPREME COURT.

Causes how carried up.

Criminal causes how carried up.

Bill of exceptions how formed.

Civil causes carried up in like manner.

Within what time.

Facts not to be controverted.

Decision on the Record.

Judge must sign Bill of Exceptions.

Supersedeas.

Party complaining must give Bond and Security in civil cases.

In criminal cases must enter into Recognizance.

Where the case is not bailable a Supersedeas may be ordered.

Notice of signing of Bill of Exceptions must be given.

Copy of notice must be served.

Transcript of the Record must be sent up.

Criminal or civil nature may, for alleged error in any decision, sentence, judgment, or decree, of any such superior court, be carried up, from the counties in the respective districts aforesaid, to the judges of the supreme court, at the respective terms thereof, for such district, to be by the said supreme court revised and determined. Any criminal cause may be carried up to the supreme court on a bill of exceptions, in writing, specifying the error or errors of law complained of, to be drawn up by the party, his counsel or attorney, [see 41,] within four [see 21] days after the trial of the cause in which the decision or sentence has been had; and be submitted to the judge of the superior court before whom such criminal cause may have been tried, to be by him certified and signed. Any cause of a civil nature, either on the law or equity side of the superior court, may in like manner be carried to the supreme court, on a bill of exceptions, specifying the error or errors complained of in any decision or judgment, to be drawn up by the party complaining thereof, his counsel, solicitor, or attorney, within the time aforesaid, [see 21,] and submitted to the judge before whom the cause may have been heard, to be by him certified and signed, [see 42.] But in no case shall the facts be controverted in the supreme court so as to require attendance of any witness or witnesses, under any pretence whatever. Said supreme court shall hear and determine upon matters contained in the transcript of the record of the cause, and not otherwise. Upon exhibition of any such bill of exceptions to the judge of the superior court, it shall be his duty, if such bill of exceptions be true and consistent with what has transpired in the cause before him, to certify and sign the same. Such bill of exceptions shall operate as a supersedeas to the judgment, sentence, execution, or decree, of the court below, in all cases where bond may be given or affidavit filed, as hereinafter provided. If in civil cases, either in law or equity, the party complaining of error shall, within four days [see 23] after the term at which the exceptions were taken, pay all costs which may have accrued, and, either personally or by his agent, solicitor, or attorney in fact or at law, give bond with security to be approved of by the clerk of the superior court, and conditioned to pay the eventual condemnation money and all subsequent costs; and if in a criminal case, where the offence is by law bailable, the party complaining of error shall enter into recognizance with security, to be in like manner approved, conditioned for the appearance, in person, of such party complaining, to abide the final order, judgment, or sentence, of said court; and if the offence be not bailable, or if the party be sentenced to imprisonment in the penitentiary and be unable to give security as required, the judge of the superior court may order a supersedeas, at the time of certifying and signing the bill of exceptions. When such bill of exceptions shall have been signed and certified by the judge of the superior court, and such bond with security shall have been given, or recognizance with security entered into and cost paid, notice of the signing of such bill of exceptions shall be given, if in a criminal case, to the attorney or solicitor general, and in civil causes, in law or equity, to the adverse party or his counsel, within ten days after the same shall have been done, and shall be filed in the clerk's office where such bond or recognizance has been given, immediately thereafter, and on a copy of such notice being served by a sheriff, constable, or attorney of the superior court, and filed in the clerk's office with the bill of exceptions, it shall be the duty of the clerk of the superior court below to certify and send up to the supreme court a complete transcript of the entire record of the cause below, duly certified under his hand and seal of office, and also the bill of exceptions, within
ten days after he shall have received the original notice, with the return of service thereon.

4. Sec. V. The supreme court shall proceed at the first term, unless prevented by providential cause, to hear and determine each and every cause, which may in manner aforesaid, be sent up from the court below, upon the record and bill of exceptions, on the grounds therein specified and on no other grounds. Upon the decision of the supreme court, on matters of law or principles of equity, which may arise in the bill of exceptions, which decision shall always be in writing, [and be delivered by the judges of the said court seriatim, except in cases where they are unanimous, repealed—see 55.] the court shall cause to be certified to the court below, such decision and award, such order and direction in the premises, as may be consistent with the law and justice of the case. Which decision, so rendered and ordered, and direction so awarded, shall be respected and carried into full effect by the court below. If the decision and judgment of the court below be for any sum certain, and be affirmed in the supreme court, the plaintiff may, in the superior court, enter judgment against the defendant and his securities for the amount of principal, interest and costs, as shall have been confessed or found by a jury, and ten per cent. damages on the principal sum, and have execution immediately after the decision of the supreme court, so certified as aforesaid: Provided, that if any one or more of the judges of the supreme court shall certify that in his or their opinion, such cause was not taken up for delay only, then and in such case, the damages shall not be allowed. Judgments in the courts below, if affirmed, shall not lose any lien or priority, by reason of the proceedings in the court above.

5. Sec. VI. If any judge of the superior court shall refuse to certify a bill of exceptions when properly tendered, or if any clerk shall fail or refuse to send up the transcript of the whole record, in any cause, according to the provisions of this act; or he, or any sheriff, shall refuse or neglect to perform any duties imposed upon him by this act, said supreme court, while in session in any district in this State, may issue a writ of mandamus to such officer, and enforce obedience thereto, if necessary, by attachment. And in case that such refusal by any such officer have delayed the party applying for or tendering a bill of exceptions, as aforesaid, beyond the time limited in the foregoing part of this act, he shall not thereby lose his remedy, but may proceed as if the time limited had not expired.

6. Sec. VII. The sheriff of the county wherein the supreme court is holden, or his deputy, shall attend the sessions thereof, and obey all lawful orders, enforce all lawful commands, and execute all lawful processes of said court; and for the service of any process or order of said court, he shall receive the fees allowed for like service in the superior courts, to be taxed and paid in like manner.

7. Sec. VIII. Each of the said judges of the supreme court shall receive a salary of two thousand five hundred dollars per annum, to be paid as the salaries of the judges of the superior courts are now paid. The amount of said salary shall not be increased or diminished during the continuance of such judge of the supreme court, in office; and no judge shall receive any other perquisite, reward, or compensation, than the amount of his salary. Each and every judge of the supreme court shall, before the governor of the State, and prior to his receiving his commission, take the oath to support the constitution, and other oaths, now by law required of the judicial officers of this State.

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

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

10. Sec. XI. The said clerk shall be entitled to the same fees as clerks of the Superior Courts in this State, to be taxed as part of the costs, and for which the attorney of record shall always be bound.

11. Sec. XII. Some fit and proper person shall be elected by the judges of said court as reporter, who shall hold his office during the term of six years, unless sooner removed by the court, and shall receive for his services a salary from the State, of one thousand dollars per annum. Said reporter shall attend all the sessions of said court, and report, in a proper and professional manner, all the decisions there made, with the reasons therefor, [and he shall not, during his service as reporter, appear as counsel or act as attorney, in any case, in any court of this State.—Repealed, see 19.] The reporter shall from time to time publish, in good and substantial forms, the reports so made, as aforesaid; and if at any time he shall neglect to publish, within four months after sessions for each year have closed, the decisions of that year, he shall forfeit one fourth of his salary, for that year, and another fourth for every additional month’s delay: Provided, that if the judges of said court, or a majority of them, shall certify that such delay was not from any fault or neglect of the reporter himself, or those under his control, such forfeiture shall not be incurred. The reporter shall also be allowed the copyright. And provided further, that he furnish, free of expense, and well bound, one copy of said reports to each judge of said court, for the time being; one copy to the clerk of said court, to be kept in his office as public property; twenty-five copies to the State, to be delivered to his excellency the governor, as soon as may be; said twenty-five copies to be disposed of as the General-Assembly
may direct; and a copy to each clerk of the superior court for each county in the State, to be kept in his office for the perusal of any person.

12. Sec. XIII. The clerk and reporter of said court, before entering on the duties of their respective offices, shall be sworn to the faithful discharge of their duties, and take all other oaths prescribed by law for civil officers.

13. Sec. XIV. The judges of said supreme court shall have power to establish rules of practice, and to regulate the admission of attorneys in said supreme court, and to award all such process as may be necessary to enforce obedience to their orders and judgments, and as are usual in other appellate tribunals; and, also, to establish and procure a seal for said court.

14. Sec. XV. In case plaintiff in error shall fail to cause the transcript of the record to be filed with the clerk of the supreme court, at the place of holding said court, by the third day of the term next succeeding the time of granting the supersedeas, and the adverse party shall file with the clerk of the supreme court, a certificate of the granting of such supersedeas, signed by the clerk of the superior court wherein the cause is depending, then it shall be the duty of such supreme court to affirm the judgment below, on such certificate.

15. Sec. XVI. It shall be the duty of the attorney or solicitor-general of the judicial circuit wherein any criminal cause is tried, and which may be taken up in manner aforesaid, to appear and attend to said cause in the supreme court.—[For fees see sec 29.]

16. Sec. XVII. Whenever a party shall not be able to give security, he shall file an affidavit, stating that he is unable from his poverty, to give the security for the eventual costs and condemnation money, and that his counsel has advised him that he has good cause for a writ of error; and upon filing the same in the clerk's office, he shall be entitled to all the privileges which he would have had if he had given the security and paid the costs, as required by this act, [and see 52.] And when any party, in any civil cause, residing out of the county in which it may be tried, shall not be desirous of obtaining a supersedeas, he shall be entitled to have his cause carried up to the supreme court, under the provisions of this act, without giving bond or making affidavit, as herein-before provided; the adverse party being at liberty to proceed with execution.

An Act amending the act of the General Assembly, organizing the Supreme Court, so far as to make it discretionary with Plaintiffs in Error, whether they will include as parties Plaintiff, Securities on Appeal; on Injunction Bonds and Writs of Error.—Approved Dec. 23, 1847.

17. Sec. I. Be it enacted, That from and after the passage of this act, it shall in no case be considered as necessary to join with the parties to the suit in the superior court, carrying a case therefrom up to the supreme court, by bills of exceptions and writs of error, the security on appeal, or on any injunction bond.

18. Sec. II. No writ of error shall be dismissed, or delayed, in its hearing and decision, where the parties to the writ or declaration below, are included in said writ of error.

An Act to amend the twelfth section of an act, entitled “an act to carry into effect that part of the first section of the third article of the Constitution, which requires the establishment of a Supreme Court for the Correction of Errors, and to organize the same, and to regulate the proceedings thereof,” assented to on the tenth day of December, eighteen hundred and forty-five.—Approved Dec. 24, 1847.
19. Sec. I. *Be it enacted*, That from and after the passage of this act, so much of said recited section as declares that the reporter of said court, shall not during his services as reporter, appear as counsel, or act as attorney, in any case, in any court in this State, be and the same is hereby repealed.

20. Sec. II. The reporter of said supreme court shall be entitled to receive his salary quarterly, as other State officers, and be authorized to appoint an assistant reporter, such appointment to be submitted to and approved by the judges of said court, and entered upon the minutes, either in term or vacation. And the said reporter, or his assistant, shall attend each term of the court, unless prevented by providential cause, or relieved therefrom, by leave of absence, by the judge, [judges.]

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

An Act amendatory of the act approved the tenth of December, eighteen hundred and forty-five, organizing a supreme court for the correction of errors, in relation to bills of exceptions; giving of bond by the party taking up a case, and directory of the duty of the clerk, as to transcripts accompanying cases. *Approved Dec. 29, 1847.*

21. Sec. I. *Be it enacted*, That from and after the passage of this act, that so much of the act of which this is amendatory, as requires bills of exceptions, in both civil, criminal and equity cases, to be drawn up and submitted to the judge before whom such cause was tried, within four days after the trial thereof, be and the same is hereby altered and amended so as to allow them to be drawn up and submitted for signature and certification by the judge, within thirty days after the close of the term in which said cause was heard.

22. Sec. II. With a view to lighten the costs upon parties in said court, that the transcripts of the record, from the court below, shall not be recorded by the clerk of the supreme court, but shall be filed up carefully, by number of the proper term of the court, in which the cause, in which it was used, was tried.

23. Sec. III. So much of the fourth section of the act of which this is amendatory, as prescribes four days within which cost shall be paid and bond given, be and the same is hereby extended to thirty days.

An Act to curtail the labor of the Clerk of the Supreme Court, and to reduce the cost in said Court, and to authorize amendments in said Court. *Approved Feb. 23, 1850.*

24. Sec. IV. The remitter shall consist of the judgment of the supreme court and nothing more.

25. Sec. V. The clerk of the supreme court shall make no charge but for services actually performed; and for services performed, he shall be allowed the same costs as are allowed by law to the clerk of the superior court.

26. Sec. VI. All bills of exception and the copies thereof, shall be amendable by order of the supreme court, so as to be made to conform to the record of the cause.—[See 31.]

An Act in relation to the Supreme Court of this State.—*Approved Feb. 23, 1850.*

Whereas, As it is essential to the proper administration of the laws, that the sessions of the Supreme Court be held at such places as will afford the Judges the use of competent libraries, which is not the case under existing laws, for remedy whereof—
27. Sec. I. Be it enacted, That all bills of exceptions, writs of error and citations, in or from the supreme court, shall be amendable without delay or cost, in conformity to the record, or cause below.

An Act to amend the several acts in relation to the Supreme Court, so far as they relate to the Reporter and Assistant Reporter.—Approved Feb. 23, 1850.

28. Sec. I. Be it enacted, That it shall not be lawful for the reporter of the decisions of the supreme court of this State, or his assistant, in any case hereafter, to incorporate into, or publish with the decisions of said court; or to insert into any volume of said reports, any argument, or brief of counsel, farther than a simple statement, or brief of the authorities referred to by said counsel, and the points made.

An Act to compensate Solicitors-General for services rendered the State in the Supreme Court, in Criminal cases.—Approved Feb. 23, 1850.

29. Sec. I. Be it enacted, That the solicitors-general of the several judicial circuits of this State, for the rendition of official services in the supreme court, in criminal cases, shall receive the following fees, to wit:—

In all cases where the punishment is less than confinement and labor in the penitentiary, the sum of fifteen dollars; in all cases involving punishment by confinement and labor in the penitentiary, the sum of thirty dollars; and in all cases where the punishment is death, the sum of fifty dollars.

30. Sec. II. Upon the presentation of the certificate of the clerk of the supreme court, of the trial of the case or cases, and the rendition of the service, the governor shall draw his warrant in favor of the solicitor or solicitors, in accordance with the provisions of the first section of this act. Any law to the contrary notwithstanding.

An Act to regulate the Practice of the Supreme Court, and of the Superior Courts of this State, and for other purposes. And to relieve suitors in the Supreme Court. And to change the districts, times and places of holding the Supreme Court.—Approved Jan. 22, 1852.

31. Sec. I. Be it enacted, That when the original writ of error, original citation and notice, and the original bill of exceptions, shall be filed and served within the time prescribed by law, no cause pending in the supreme court shall be dismissed, but any other error or defect shall be amended instantaneously.

32. Sec. II. That the original bill of exceptions, after being filed in the clerk's office of the superior court, shall be copied by the clerk thereof, and the copy retained by him and filed in office, and the original sent up with the papers in the case.

33. Sec. III. That the law which requires the decisions of the judges of the supreme court, to be handed to the reporter, to wit: the first section of an act "to curtail the labor of the clerk of the supreme court, and to reduce the cost in said court, and to authorize amendments, in said court," approved February 23, 1850, be and the same are hereby repealed. And hereafter said decisions shall be handed to the clerk, so soon as written out, and shall immediately be recorded by him, and then turned over to the reporter.

34. Sec. IV. That when any clerk of the superior courts shall fail, refuse, neglect or omit to certify and send the whole, or any part, of the papers in any cause certified to the supreme court, it shall and may be lawful for the party, or his or her attorney, to make oath thereof; and upon application to any one of the justices [judges] of the supreme court, either in term-time.
or vacation, a rule nisi. shall issue, under the order of said justice or court, requiring said clerk to show cause why said papers should not be certified and sent up; and to show cause why he should not be punished as for a contempt, for his refusal, failure, neglect, or omission of duty; which rule shall be returned to the next, or then present term of the court for the district to which said clerk belongs, under such rules and regulations, and upon such service, as said justice or court, in vacation or term-time, may direct. And upon the return of said clerk being made, the said court may pass such order in the premises, as may seem right and proper: Provided, that no punishment for contempt, as aforesaid, shall exceed that now prescribed by law for contempts.

35. Sec. V. That when any party to a cause desires to except to the decision of any judge of the superior court, and he shall resign, or his term of office shall expire before the expiration of the time within which the bill of exceptions should be tendered by law, the said judge shall be considered so far an officer capable of certifying, or refusing to certify the same, and subject to all the responsibilities for such refusal, as though he were in office. And when any judge, as aforesaid, shall die, or remove beyond the limits of the State, before the expiration of the time aforesaid, and the party complaining should not have, nor tendered, his said bill of exceptions, the right of said party to his said exceptions, shall not thereby be lost, but the same verified by the affidavit of two attorneys of the court, within the time prescribed for tendering bills of exceptions, shall entitle said cause to be heard in the supreme court, as though the same had been certified by the presiding judge.

36. Sec. VI. That when any cause shall be sent back to the superior courts, by the supreme court, the same shall be in order for trial at the first term of said superior court, next after the decision of the said supreme court. And where either party may have exhausted their continuances on the appeal, the said superior courts shall have full power and authority to grant one continuance to said party, as the ends of justice may require.

37. Sec. VII. That all causes in either the supreme, or the superior courts of this State, may be tried under the provisions of this act, or of those of which it is amendatory, until the first day of May next, when this act shall repeal all laws and parts of laws, militating against any of its provisions.

An Act to alter and amend an act passed 10th day of December, 1845, to carry into effect that part of the first section of the third article of the Constitution, which requires the establishment of a Supreme Court for the Correction of Errors, and for other purposes; so as to reduce the number of places for the sessions of said Supreme Court, and to prescribe the duty of the Clerk of said Court, in certain cases; and for other purposes.—Approved Dec. 22, 1855.

38. Sec. I. Be it enacted, That said supreme court shall be holden at the times and places following, to wit:—On the second Monday in January, and second Monday in June, in each year, for the first district, to be composed of the Eastern [Brunswick] and Middle judicial circuits, at Savannah. On the fourth Monday in January and the fourth Monday in June, in each year, for the second district, to be composed of the Macon, South-Western [Pataula] and Chattahoochee judicial circuits, at Macon. On the fourth Monday in March and the second Monday in August, in each year, for the third district, to be composed of the Flint, Coweta, Blue Ridge, [Tullapoosa] and Cherokee judicial circuits, at At-
lanta. On the fourth Monday in May and fourth Monday in November, in each year, for the fourth district, to be composed of the Western and Northern judicial circuits, at Athens. On the second Monday in May and November, in each year, for the fifth district, to be composed of the Ocmulgee and Southern judicial circuits, at Milledgeville.

39. Sec. II. That it shall be the duty of the clerk of the said supreme court to arrange the cases, on the docket of said court, by circuits; and it shall also be his duty, to give notice in one of the newspapers printed at the place where said supreme court is to be held, of the order in which the circuits are arranged; and every case that is docketed, before all the cases from that circuit are heard, and shall be considered docketed in time; and that errors may be assigned and issues joined, in said cases, at any time before said cases are called.

Sec. III. [Repeals conflicting laws.]

An Act to simplify the method of carrying cases to the Supreme Court; and for other purposes.—Approved March 6, 1856.

40. Sec. I. The General Assembly of the State of Georgia, do enact as follows—When any party is dissatisfied with any decision made by any of the judges of the superior courts of this State, such party may carry the case in which said decision is made to the supreme court, under the following rules and regulations:

41. Sec. II. The party complaining of such decision, shall make out a bill of exceptions and present [it] to the judge making the decision, within thirty days after the adjournment of the court at which said decision was made; and if such decision was made at chambers, within thirty days after such decision was made; and it shall be the duty of the judge to certify and sign, or refuse to sign, said bill of exceptions within two days after the same shall be presented to him, or shall come to his hand.

42. Sec. III. The certificate and order of the judge, which shall be signed by him, shall be substantially as follows: “I do certify that the following bill of exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of. And the clerk of the superior court of the county of —— is hereby required and ordered to make out a complete copy of the record of said case, and to certify the same to be a true and complete copy, and cause the same to be transmitted to the —— term of the —— district of the supreme court, that the errors alleged to have been committed may be considered and corrected.” And which shall be the writ of error in said case.

43. Sec. IV. It shall be the duty of the party obtaining said bill of exceptions, within ten days after the same is signed by the judge, to serve the opposite party, or his attorney-at-law, with a copy of such bill of exceptions, or obtain an acknowledgment of service from the party or his attorney-at-law; and within two days thereafter to file said bill of exceptions in the clerk’s office of the court where the case was tried, or depending, in which the errors complained of were committed.

44. Sec. V. It shall be the duty of said clerk, within ten days after said bill of exceptions shall have been filed in his office, to make out a copy of said bill of exceptions; and also, a complete transcript and copy of the record in said case, and to certify the same to be a true and complete copy, and to cause the same, together with the original bill of exceptions, to be enveloped and transmitted to the next term of the supreme court of the district in which such county is situated, directed to the clerk of said court: Provided, said court does not sit in a shorter time than fifteen days
from the time said bill of exceptions is filed in the clerk's office, as afore-
said; and if within a shorter period, then to the next term of said court
held thereafter. And the clerk of said superior court shall retain said copy
of the bill of exceptions in his office.

45. Sec. VI. No other writ of error, citation, or notice shall be re-
quired, except as herein-before provided; nor shall any exception be taken
or allowed, as to the manner in which any case has been taken to said
supreme court: Provided, the previous provisions of this act have been
substantially complied with.

46. Sec. VII. If it shall so happen that the judge of the superior
court should not be at home, at the time when application is made for
signing a bill of exceptions, or when such bill of exceptions arrives at
the post-office where he usually receives his letters, it shall be lawful for
said judge to sign said bill of exceptions on his return home, although the
time within which said bill of exceptions is to be signed, by the provi-
sions of this act, may have expired [and see 54]: Provided, said applica-
tion for signing said bill of exceptions was made before the expiration of
the time aforesaid, or that said bill of exceptions was deposited in the
post-office in time to have reached said judge before the expiration of the
time within which bills of exception are to be signed by the provisions
of this act. The judge shall state in his certificate the fact of his absence.

47. Sec. VIII. It shall not be necessary to embody in the bill of ex-
ceptions any paper, or the copy of any paper, that is contained in the tran-
script of the record; nor to state therein any fact that appears by
said transcript; nor to embody therein any documentary, or other evi-
dence, that is not connected with, or material for a correct and clear un-
derstanding of some one of the errors complained of in the bill of ex-
ceptions.

48. Sec. IX. It shall not be necessary to make any assignment of
errors, as heretofore practiced in said court, but the case shall be heard
upon the errors as set forth in the bill of exceptions, which shall be plainly
and distinctly therein set forth.

An Act to provide a remedy for cases in the Supreme Court, where the
Defendant in Error dies between the time of the trial in the Circuit
Court, and the time of filing the Bill of Exceptions, Writ of Error,
Citation and Notice, in said Court.—Approved March 5, 1856.

Whereas, no remedy has by law been provided for the service of copies
of the Writ of Error, Citation and Notice, in cases where the Defendant
in Error has departed this life after the trial of the cause in the Circuit
Court, and before the time of filing of the Bill of Exceptions, Writ of
Error, Citation and Notice in the said Circuit Court; for remedy whereof—

49. Sec. I. Be it enacted, That in all cases that now are, or hereafter
may be, pending in the supreme court of this State, where the defendant in
error has departed this life between the time of the trial of the cause in the
circuit court, and the time of the filing of the bill of exceptions, writ
of error, citation and notice, of signing and certifying of the bill of ex-
ceptions, in the circuit court in which such cause has been or may be tried,
service of copies of such writ of error, citation and notice upon the
attorney or attorneys engaged in behalf of such defendant in error in the
trial of such cause in the circuit court, shall be held and deemed sufficient
service to authorize the clerk of said circuit court to certify and send up
to the supreme court a transcript of the record of such cause, together
with the bill of exceptions, writ of error, citation and notice, as in other
cases.
50. Sec. II. That in all cases contemplated by the first section of this act, and the death of such defendant in error has been or shall be suggested in said supreme court; and when it shall be made to appear to said supreme court, that legal representatives of such defendant in error, have been appointed and qualified to take charge of the estate of such deceased defendant, then and in that case, it shall be the duty of said court to cause *scire facias* to be issued to such legal representatives to make them parties to said cause in said supreme court, as in other cases: *Provided nevertheless,* that such legal representatives may come in, and on motion in said supreme court, cause themselves to be made parties defendant in error in such cause, as in other cases.

**An Act** to prescribe the mode of taxing Costs in the Supreme Court of this State.—*Approved March 6, 1856.*

51. Sec. I. *Be it enacted,* That from and after the passage of this act, when judgment shall be pronounced in any cause, in the supreme court of this State, the costs of such case in said court, shall be taxed by the clerk thereof, item by item, which taxing of costs shall be entered on the minutes of said court, at the foot of said judgment; and shall be, in all cases, transmitted in the remittitur to the court where the cause originated; for which service no extra costs shall be charged by said clerk.

Sec. II. [Repeals conflicting laws.]

**An Act** to pay the Clerk the Cost due him in criminal *Pauper* cases, returned to the Supreme Court of this State, and to explain the 17th section of an Act, approved 10th December, 1845, organizing the Supreme Court of the State of Georgia.—*Approved Dec. 15, 1857.*

Whereas, by the 17th section of an act, approved 10th December, 1845, organizing the Supreme Court of the State of Georgia, it was not intended thereby to deprive the Clerk of said Court, of his costs, in criminal *Pauper* cases, returned to said Court: therefore—

52. Sec. I. *Be it enacted,* That his excellency, the governor, be and he is hereby authorized to draw his warrant, upon any money in the treasury, not otherwise appropriated, in favor of the clerk of the supreme court, for all legal cost due him, in each and all criminal *pauper* cases, returned to said court. It shall be the duty of said clerk, to submit to his excellency, the governor, a fair statement of each case, showing the nature of the crime charged, and the county from whence it came; returned under the seal of said court, before receiving compensation.

**An Act** to make uniform the Decisions of the Supreme Court of this State; to regulate the reversals of the same, and for other purposes.—*Approved Dec. 9, 1858.*

53. Sec. I. That from and after the passage of this act, the decisions of the supreme court of this State, which may have been heretofore, or which may hereafter be made by a full court, and in which all three of the judges have or may concur, shall not be reversed, overruled or changed; but the same is hereby declared to be, and shall be considered, regarded and observed, by all the courts of this State, (when they have not been changed by legislative enactment,) as fully, and to have the same effect, as if the same had been enacted, in terms, by the General Assembly.

Sec. II. [Repeals conflicting laws.]

**An Act** to amend the acts in relation to taking cases to the Supreme Court.—*Approved Dec. 11, 1858.*
JUDICIARY.—SUPREME COURT.

54. Sec. I. That if, in any case which has arisen, or may hereafter arise, the judge before whom said case was tried, shall by reason of absence from the State, death, sickness or other providential cause, be prevented from signing and certifying a bill of exceptions, the affidavit of the attorney for the plaintiff in error, (and other credible persons,) within three months from the trial of such case, to the truth of the bill of exceptions, or the agreement of the parties, or their counsel thereto, shall be a sufficient authentication of such bill of exceptions. And it shall be the duty of any judge of the superior court, on being presented with such bill of exceptions, as authenticated, to issue the order to the clerk of the superior court where such case was tried, to send the case to the supreme court which shall next succeed the issuing of such order, which shall sit for the hearing of causes for the district to which said superior court belongs; and such order, of such judge, shall be the writ of error, in such case.

Sec. II. [Repeals conflicting laws.]

An Act to repeal a part of the fifth section of the act approved December 10th, 1845, entitled "An act to carry into effect that part of the first section of the third article of the Constitution which requires the establishment of a Supreme Court, for the correction of Errors, and to organize the same, and to regulate the proceedings thereof."—Approved Dec. 11, 1858.

55. Sec. I. That so much of said recited section as requires the decisions of the supreme court to be delivered, or written out, by the judges of said court, seriatim; except in cases where they are unanimous, be and the same is hereby repealed.

Sec. II. [Repeals conflicting laws.]

Bill of Exceptions.

STATE OF GEORGIA, \ 1 Be it remembered, that during the regular \ Houston County. \ April Term of the Superior Court of said County, \ held in the year 1859, the case of John Doe against Richard Roe, (be- \ ing an action of Assumpsit,) came on to be tried, before the honorable \ Peter E. Love, one of the Judges of the Superior Courts of this State, \ presiding in said Court, and a special Jury, empannelled to try said \ cause.

The Plaintiff tendered in evidence, the deposition of Charles Smith, \ taken by Commission on Interrogatories. The Defendant objected to \ said Testimony, on the ground that the Witness only states his opinion \ and belief. The Court overruled said objection and allowed the same \ to be read in evidence, to the Jury. Which Testimony is as follows:

\[Here copy the Answers, or so much as is material to show the objection.\]

To which ruling and decision of the Court, in admitting said Testi- \ mony, and in overruling Defendant's objection thereto, Defendant \ excepts.

The Plaintiff having closed his evidence, the Defendant offered in \ evidence, the original Receipt, of which the following is a copy:

\[Here copy the paper offered.\] The Plaintiff objected to said paper be- \ ing read in evidence, on the ground, [state the ground of objection.]

The Court sustained the objection and rejected the evidence; to which \ ruling and decision, the Defendant excepts.
JUDICIARY.—SUPREME COURT.

The Defendant having offered no other evidence, the case was submitted to the Jury.

The Plaintiff requested the Judge to charge the Jury, as follows:—[Here copy the request;] which request the Court gave in charge; to which charge Defendant excepts.

The Defendant requested the Judge to charge the Jury as follows:—[Here copy Defendant's request.] The Judge refused to give said request in charge, to which refusal Defendant excepts.

The Jury retired and returned with a verdict in favor of the Plaintiff. And now, within thirty days from the close of said Term of the Court, aforesaid, the Defendant tenders this his Bill of Exceptions, and prays that the same may be certified, according to the statute. This May 1, 1859.

THOMAS P. STUBBS, Atty for Defendant.

Judge's Certificate of Bill of Exceptions.

I do certify that the following Bill of Exceptions is true, and contains all the evidence material to a clear understanding of the Errors complained of. And the Clerk of the Superior Court of the County of Houston, is hereby required and ordered, to make out a complete copy of the Record of said case, and certify the same to be a true and complete copy. And cause the same to be transmitted to the Macon Term of the Second District of the Supreme Court, that the Errors alleged to have been committed, may be considered and corrected.

Given under my hand and official signature, this May 2, 1859.

PETER E. LOVE, J. S. C.

Acknowledgment of Service of Copy of Bill of Exceptions.

We acknowledge due and legal service of a copy of the within Bill of Exceptions, and waive further service. This May 9, 1859.

PRINGLE & KING, Plaintiff's Atty's.

Clerk's Entry of time of filing in Office.

STATE OF GEORGIA, } Filed in Office, this May 11, 1859.
    Houston County. } Clerk's Office, Superior Court.

WILLIAM H. MILLER, Clerk.

Bond in a Civil Case.

STATE OF GEORGIA, } Whereas, a Bill of Exceptions has been tendered on behalf of the Defendant, John Doe, to the decisions and judgment of the Court, in the case of Richard Roe against John Doe, pending in the Superior Court of said County, and all costs having been paid; now therefore, we, John Doe principal, and Charles Smith security, both of said State and County, do acknowledge ourselves held and bound unto the said Richard Roe, his heirs and assigns, for the true payment of the eventual condemnation money, in said cause, and all future costs that may accrue in the same.

Given under our hands and seals, this May 1, 1859.

Approved, John Doe, principal, [L. S.]

William H. Miller, C. S. C. Charles Smith, security, [L. S.]
Bond in Criminal Case.

STATE OF GEORGIA vs. 
RICHARD ROE.

Indictment for Misdemeanor, in Houston Superior Court.

The Defendant, John Doe, having tendered a Bill of Exceptions to the decisions of the Court, on the trial of the above stated case, brings now, Charles Smith his security. And the said John Doe and Charles Smith do hereby acknowledge themselves held and bound unto his Excellency Joseph E. Brown, Governor of said State, and his successors in office, in the sum of two thousand dollars; subject to the following condition—

The condition of the above obligation is as follows—if the said John Doe shall be, in person, to abide the final order, judgment or sentence of said Court, in said cause, then this obligation to be void; otherwise, of force. This May 1, 1859.

Approved, 
William H. Miller, Clerk.

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

Affidavit of Inability to pay Costs.

STATE OF GEORGIA, 
Houston County.

Personally appeared before the undersigned, John Doe, the defendant in a cause, (Richard Roe against John Doe,) pending in the Superior Court of said County, who being sworn, saith that his Counsel has advised him that he has good cause for a Writ of Error; and that from his poverty, he is unable to give the security for the eventual condemnation money and costs.

Sworn to and subscribed, before me, this May 1, 1859. 
James Mack, J. P.

Clerk's Certificate to Transcript of Record.

Clerk's Office, Superior Court, May 20, 1859.

STATE OF GEORGIA, 
Houston County.

I hereby certify that the foregoing is a full and complete Transcript of the Records and Proceedings in the Superior Court of said County, in an action of Assumpsit, in which John Doe is Plaintiff and Richard Roe is Defendant.

Given under my official Signature and Seal of Office. 
[L. S.] 
William H. Miller, C. S. C.

Supersedeas.

STATE OF GEORGIA vs. 
RICHARD ROE.

Indictment for Murder and Verdict of Guilty, in Houston Superior Court.

To the Clerk of the Superior Court and the Sheriff of the County of Houston.

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

Given under my hand and Official Signature, this May 1, 1859.

Peter E. Love, J. S. C.
The honorable, the Supreme Court, met pursuant to adjournment—
Present their honors Joseph H. Lumpkin, Henry L. Benning and Charles J. M'Donald.

RICHARD ROE, Plaintiff in Error, vs. JOHN DOE, Defendant.

This case came before the Court upon a transcript of the record from the Superior Court of Houston County, and after argument had, it is considered and adjudged by the Court, that the judgment of the Court below be affirmed.

Bill of Cost.

Case carried to judgment, $3 75; recording proceedings, $28 25; aggregate $32 00. Recording opinion, $3 50; Remittitur, $1 25; Sheriff, $1 25; aggregate, $6 00.
Whole amount of Cost, $32 00

In the above case, his honor Judge Lumpkin, has entered the usual certificate, to prevent the collection of damages.

SUPREME COURT OF GEORGIA.

MACON, January Term, 1859.

I certify that the above is a true Extract taken from the Minutes, and that the Plaintiff in Error paid the Bill of Costs.

Given under my hand and seal of office.

[ L. S. ]

ROBERT E. MARTIN, Clerk.

Judgment of the Court below.

RICHARD ROE, Plaintiff in Error, vs. JOHN DOE, Defendant.

The above stated case having been carried to the Supreme Court at Macon, by Writ of Error, and the said Supreme Court, at the January Term thereof, having affirmed the Decision of this Court, on the trial of this cause; it is, on Motion of Council for Defendant in Error, ordered and decreed, that the said Judgment of Affirmance of said Supreme Court, be entered on the Minutes of this Court, as such. And it is further ordered, adjudged, and decreed, that the said Defendant John Doe, do recover of and from the Plaintiff in Error, the sum of fifty dollars as his Costs, in and about the said cause in Equity, (in the pleadings mentioned,) expended in the defence and prosecution of the same. And the Plaintiff in Error, in mercy, &c.

SAMUEL T. BAILEY,

Def's Sol.

April Term, 1859.
SUPERIOR AND INFERIOR COURTS.

An Act to amend an act entitled "an act to revise and amend the Judiciary System of this State."—Approved Feb. 16, 1789.

56. Sec. I. The superior courts shall be held in each county in the respective districts, twice in every year, by one or more of the judges of the superior courts.

An Act to compel the Judges of the Superior Courts of each Circuit in the State, to hold Adjourned-Terms in every County within their Circuit, where the business requires, until the Docket is cleared; and for other purposes.—Approved Dec. 11, 1858.

57. Sec. I. Be it enacted, That from and after the first day of January next, it shall be the duty of every judge of the superior court, to hold an adjourned-term in every county within their respective circuits, where the business requires, to clear the docket.

58. Sec. II. That at the regular-term of the court, where an adjourned-term is required, juries shall be drawn for the adjourned-term, and at the adjourned-term, for the next regular-term; and all laws militating against this act, be and the same are hereby repealed.

59. Sec. IV. In case of unavoidable accidents, whereby the said superior court, in any county, shall not be held at the appointed time for holding the same, it shall be the duty of the clerk of such court, to adjourn the same from day to day, not exceeding two days; and if the said court should not sit within the two days, as aforesaid, such clerk shall then adjourn the same to the next term. [And see 75 and 76.]

59.* 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.—[As to adjournment, see 74.]

POWERS COMMON TO BOTH COURTS.

60. Sec. III. The said superior and inferior courts shall have power and authority to hear and determine all causes, both civil and criminal, of which they shall severally have jurisdiction, according to the constitution and laws of this State, by a jury of twelve men, to be taken from the county, in such manner as shall hereinafter be prescribed, according to the usages and customs of law.

61. Sec. V. The said superior and inferior courts shall be courts of record, and have power to administer oaths, and exercise all other necessary powers appertaining to their jurisdictions respectively, according to law. And where any of the said courts shall fail to meet, the proceedings in such courts shall not thereby be discontinued, but shall stand continued over in the same manner as if such failure had not been. And all witnesses going to, attending on, and returning from any of the said courts, shall be free from arrest on any civil process.

62. Sec. VI. The said courts shall have power on the trial of causes cognizable before them respectively, on ten days' notice, and proof thereof being previously given to the opposite party, or his, her or their attorney, [see 63.] on motion to require either party to produce books and other writings, in his, her or their possession, power or custody, which shall contain evidence pertinent to the cause in question, under circumstances where such party might be compelled to produce the same, by the ordinary rules of proceeding in equity. And if the plaintiff shall fail or refuse to comply with such order, it shall be lawful for the court, on motion, to give judgment against such plaintiff, as in case of non-suit. And if the
defendant shall fail or refuse to comply therewith, the court, on motion, shall give judgment against such defendant, as in case of judgment by default. And the said courts respectively, shall have power and authority to establish copies of lost papers, deeds or other writings, under such rules and precautions as are or may have been customary and according to law and equity.—[And see 63.]

An Act to alter and amend the sixth section of the Judiciary Act of this State, passed in the year seventeen hundred and ninety-nine, so far as relates to the Notices provided for in said section. And to prescribe the mode of issuing Seire Facias, in certain cases therein provided for.—Approved Dec. 11, 1841.

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

64. SEC. II. In case of the service of any notice as aforesaid, where it shall be made clearly to appear to the court before which the cause is pending, that the party notified has used due and proper diligence, but cannot respond to said notice, that it shall be continued at the instance of the parties notified,

Notice to produce Books, etc.

JOHN DOE vs. RICHARD ROE.

Assumpsit in Houston Superior Court.

The Plaintiff is hereby notified and required, to produce, on the trial of the above-stated case, his original Books of Account; kept for the year eighteen hundred and fifty-eight; containing the original entries of the Account of the Defendant; the same forming the foundation of the Plaintiff’s suit. And all other Books and Papers in his possession, which in any manner relate to the above suit. As said Books and Papers contain evidence pertinent to the case, and will be required on the trial thereof. This May 1, 1859.

JAMES A. PRINGLE, Def’t’s Atty.

An Act to provide for establishing Lost or Destroyed Papers, and suing upon the same.—Approved March 5, 1856.

65. SEC. I. Be it enacted, &c., That from and after the passage of this act, when any person shall seek to establish lost or destroyed papers under the 6th section of the Judiciary act of 1799, he or she shall present to the clerk of the superior or inferior court, a petition in writing, together with a copy in substance, of the papers lost or destroyed, as near as he or she can recollect, which copy shall be sworn to; whereupon, the clerk shall issue a rule nisi, in the name of the judge of the superior court, if the application be made to the superior court, and in the names of the justices of the inferior court, if the application be made to the inferior court, calling upon the opposite party to show cause, if any he or she have, why the copy

Mode of establishing Lost Papers
sworn to, should not be established in lieu of the original so lost or destroyed.

66. Sec. II. That said rule nisi. shall be served personally on the party, if to be found within the State, and if the party cannot be found within the limits of the State, then said rule nisi. shall be published in some public gazette in this State, for the space of three months, which publication shall be deemed and considered service.

67. Sec. III. That the court to which said rule nisi. may be returnable, shall grant a rule absolute, establishing the copy of the lost or destroyed paper sworn to, at the first term of said court, if it appear to the court that the rule nisi. has been served according to the provisions of the second section of this act, and no sufficient cause appearing to the court, why said rule absolute should not be granted.

68. Sec. IV. That no motion for a continuance shall be granted on an application for a rule absolute in conformity with this act, unless it appear reasonable and just to the court; nor shall a continuance be allowed but once to the same party, only on providential cause shown to the court.

69. Sec. V. That the clerk of the court in which a lost or destroyed paper has been established, shall furnish the copy paper established in conformity with this act, with a certified endorsement on the same, (of the day and date and term of the court at which it was established,) to the party who had the paper established: Provided, all costs which may have accrued in establishing said paper, have been paid.

70. Sec. VI. That if the paper lost or destroyed be a note, bill, bond or other evidence of debt, the person owing the same, may institute suit upon the same, so soon as a rule nisi. has issued in conformity with this act.

71. Sec. VII. That whenever suit is constituted in conformity with the 6th section of this act, it shall be set forth in the original process, that the paper is lost or destroyed. And in no case shall there be a judgment had, until it shall be determined by the court, whether the application to establish the lost or destroyed paper sued on, be granted or not; and if granted, then judgment may be had, as in other cases.

72. Sec. VIII. That oyer shall not be demanded in any case where the petition sets forth that the instrument sued on is lost or destroyed. But oyer may be demanded at the time of the rendition of judgment; and if the plaintiff produce a copy of the instrument sued on, in conformity with the 5th section of this act, it shall be taken and considered as the original.

73. Sec. IX. That all costs which may accrue in establishing lost or destroyed papers, in conformity with this act, shall be paid by the party having the same established, unless it be otherwise directed by the court.

Sec. X. [Repeals conflicting laws.]

Petition to Establish Destroyed Note.

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

Houston County.}  Petition of John Doe showeth, that on the first
day of January, eighteen hundred and fifty-nine, Petitioner was pos-
sessed, in his own right, of a certain Promissory Note, made and exe-
cuted by Richard Roe, of said County (a copy of which, in substance,
is hereunto annexed.)

That on the said first day of January, eighteen hundred and fifty-
nine, said Note was entirely destroyed by fire, the same being due and unpaid: wherefore, Petitioner prays that the annexed copy of said Note, may be established in lieu of the original. This February 1, 1859.

JOHN M. GILES, Pet'r's Atty.

Copy Note.

One day after date, I promise to pay John Doe or bearer, one hundred dollars. Value received this December 25, 1858.

RICHARD ROE.

Petitioner's Affidavit.

STATE OF GEORGIA, } In person appeared before the undersigned,
Houston County. } John Doe, who after being sworn says, that the
facts stated in the foregoing Petition, relative to the annexed copy
Note, are true. And that the copy Note is a true and exact copy of the
original Note destroyed, as near as he can recollect.

Sworn to and subscribed, before me, 
this February 1, 1859.

James Mack, J. P.

Rule Nisi. by the Clerk.

GEORGIA—HOUSTON COUNTY.

JOHN DOE } Petition to establish destroyed Note. Clerk's Office of
vs. RICHARD ROE. } the Superior Court. John Doe having by his Petition,
filed in this office, set forth that Richard Roe, of said County, made
and executed a Promissory Note, of which the following is a copy:
[here set out a copy of the Lost Paper, sought to be established, signed by
the Maker, etc.,] and that said original has been destroyed by fire; and
having prayed that said copy, which is sworn to, should be established
in lieu of the original. It is, therefore, ordered that said Richard Roe
show cause, (if any he have,) at the next Term of the Superior Court
of said County, to be held on the fourth Monday in April, eighteen
hundred and fifty-nine, why said copy should not be established in
lieu of the original.

Witness the honorable Henry G. Lamar, Judge of said Court, this Feb-
uary 1, 1859.

WILLIAM H. MILLER, Clerk.

Rule Absolute.

JOHN DOE } Motion to establish destroyed Note. April Term, 1859.
vs. RICHARD ROE. } It appearing to the Court here, that the Rule Nisi.
granted by the Clerk of this Court, in vacation, upon
the Petition of John Doe, (requiring the Defendant to show cause, if
any he had, why the copy Note, in said Rule mentioned, should not be
established in lieu of the original, declared to be destroyed,) has been
duly served on the Defendant; and no sufficient cause appearing to the
Court, why said Rule should not be made Absolute; it is, therefore,
considered, ordered and adjudged, that said Rule Nisi. be made Abso-
late, and that the copy Note, to said Petition attached, be and the
same is hereby established, in lieu of the original.

JOHN M. GILES, Plff's Atty.
An Act to authorize the adjournment of the Superior and Inferior Courts, and Courts of Ordinary, in certain cases, by the Officers therein named. Approved Dec. 8, 1823.

Whereas, it frequently happens from unavoidable circumstances, that the Judge of the Superior Courts; a majority of the Justices of the Inferior Courts, cannot attend at the regular term of said Courts, and that a term is thereby lost, to the great injury of those concerned, as well as a delay of justice—

74. Sec. 1. Be it therefore enacted, That from and after the passing of this act, that if from any circumstance, a majority of the Justices of the inferior court, in any of the counties of this State, should fail to attend at the regular term of said inferior courts, or at any adjourned-term, it shall and may be lawful for any one of the Justices of the inferior court, in the county where such failure may take place, together with the sheriff or his deputy, coroner or constable and the clerk of said court, to adjourn said court to such time as they in their judgment may think proper.

75. Sec. III. The clerks of the superior courts of this State, be authorized, whenever they are informed by the presiding judge that it is not possible for him to attend the regular term of said court, from sickness or other causes, to adjourn the same to such time as he may direct; and shall, moreover, advertise the same at the court-house of the county in which said court is to be held, and one or more times in some public gazette of the State.—[See next Act.]

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

An Act to alter and amend the third section of an act entitled "An Act to authorize the Adjournment of the Superior and Inferior Courts, and Courts of Ordinary, in certain cases, by the Officers therein named," passed December 8th, 1823.—Approved Dec. 25, 1837.

76. Sec. I. Be it enacted, That from and after the passage of this act, none of the superior courts of this State shall be adjourned under the above-recited act, for any other cause than that of sickness of the presiding judge, or of his family, or other Providential cause, which shall be expressed in the order of adjournment.

Sec. II. [Repealing section.]

An Act to authorize the Relator in any Writ of Mandamus, to traverse the Answer or return of any person, Officer, Corporation or Court of this State, to any Writ of Mandamus issued by the Superior Courts of this State.—Approved Jan. 7, 1852.

77. Sec. I. Be it enacted, That from and after the passage of this act, whenever any person, officer, corporation or court, of this State, shall make any answer or return, under or by virtue of any Writ of Mandamus, issued by any of the superior courts of this State; or any of the judges of said superior courts, the same shall be made on oath, to be taken at the time of making such answer or return. And the relator in said Writ of Mandamus, shall be at liberty to traverse the truth of such answer or return. And upon such traverse, an issue shall be formed and tried by a special jury at the term of the superior court at which said answer or return shall be made; and if made out of term-time, then to be tried at the term next after the making of said answer or return, as in case of other traverses.

78. Sec. II. That if the jury on the trial of the issue, as aforesaid, shall find said answer or return to be false, it shall be the duty of said superior court, to award a Mandamus Absolute, to issue against said person, officer, corporation or court, of this State.
Sec. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

MANDAMUS.

Petition for the Writ of Mandamus.

STATE OF GEORGIA, ) To the honorable Henry G. Lamar, Judge of
Houston County. ) the Superior Courts of the Macon District.

The Petition of John Doe, of said County, showeth unto your honor, that he has now pending in the Inferior Court of said County, a certain action of Assumpsit, against Richard Roe of said County, alleging that the said Richard Roe from your Petitioner unjustly detains the sum of five hundred dollars, besides interest; upon a certain Promissory Note, to the said Inferior Court exhibited and shown, and which Promissory Note is now attached to the said Writ of Assumpsit in the Clerk's Office of the said Inferior Court. On which action of Assumpsit before the said Inferior Court, holden in and for said County, on the fourth Monday in July, eighteen hundred and fifty-seven, said Richard Roe filed the plea of the General Issue. And upon the trial of the said action of Assumpsit, on the fourth Monday in July last, it was found by the Verdict of twelve lawful Jurors, duly empannelled and sworn to try said cause, that the said Richard Roe did owe your Petitioner on said Promissory Note, the sum of five hundred dollars for his principal debt, and the sum of forty dollars for his interest, and the costs of suit. Which Verdict was by the said Jury duly returned to said Court, at the last term thereof aforesaid, and now remains in the files of said Court. And your Petitioner, at the said last term of said Inferior Court, moved said Court, then and still consisting of Charles Anderson, John Ragin, John D. Winn, William F. Postell and William T. Swift, Justices of said Court, to order and permit said Verdict to be recorded; and said Court did nevertheless, omit, refuse and forbid, and still do omit and refuse to order and permit said Verdict to be recorded, to the great damage and grievance of your Petitioner. All which facts aforesaid, do more fully and largely appear by the files and records of said Inferior Court, here presented to your honor.

Wherefore, Petitioner moves your honor to issue the Writ of Mandamus, requiring and enjoining the aforesaid Justices, at the next ensuing term of said Inferior Court, to be holden in and for said County, on the fourth Monday in January next, to order said Verdict to be recorded, and to proceed to final judgment therein, or signify cause to the contrary thereof, to this Court, at the next term thereof. And, as in duty bound, your Petitioner will ever pray, etc. This August 1, 1859.

JAMES A. PRINGLE, Pet'r's Atty.

Order of the Judge.

IN CHAMBERS, May 1, 1859.

STATE OF GEORGIA, ) The within Petition having been read and
Bibb County. ) considered, it is hereby ordered, that the Clerk
of the Superior Court of the County of Houston, do issue the writ of
Mandamus, directed to the Justices of the Inferior Court of Houston County, according to the prayer of the Petitioner. And let such other proceedings as are usual, be had.

Given under my hand and official signature,

HENRY G. LAMAR, J. S. C. M. C.

The Writ.

STATE OF GEORGIA,} To the Sheriff of said County—Greeting:

Houston County.} Whereas, John Doe, of said County, by his Petition, shows that he has now depending before the Inferior Court of said County, (Charles Anderson, John D. Winn, John H. Ragin, William F. Postell and William T. Swift, being the Justices of said Inferior Court,) an action of Assumpsit against Richard Roe, of said County; alleging that the said Richard Roe detains from Petitioner the sum of five hundred dollars, besides interest; founded upon a Promissory Note, which Note is of file in said Court, in the Clerk's Office. To which action of Assumpsit, at the appearance term of said Court, the Defendant filed the Plea of General Issue. And at the trial term of said action of Assumpsit, the Jury impannelled and sworn to try said case, returned a Verdict into Court of five hundred dollars, principal debt, and the sum of forty dollars interest, and the costs of suit, in favor of the Plaintiff against the Defendant. And, whereas, it is further shown by the Petitioner, that he moved said Inferior Court to receive said Verdict and order it to be recorded, which motion said Inferior Court, (then and yet consisting of the Justices aforesaid,) rejected and refused, and said Verdict was not received and recorded. Now, therefore, in order that justice may be administered in the premises, you, the said Charles Anderson, John D. Winn, John H. Ragin, William F. Postell and William T. Swift, Justices of the Inferior Court of Houston County, are hereby directed to order the aforesaid Verdict, in said cause, at the term of said Inferior Court, following this date, to be recorded, and proceed to final judgment thereon; or, at the next term of our Superior Court, under the seal of your said Court, you signify and show cause to the contrary. And your Answer and showing you do cause to be transmitted to our said next Superior Court, to be held in and for said County, on the fourth Monday in October next.

Witness, the honorable Henry G. Lamar, Judge of said Court, this August 5, 1859.

WILLIAM H. MILLER, Clerk.

Return to the Writ of Mandamus.

GEORGIA, Houston County,} To the Superior Court of the County of Houston, to be held in Perry,

INFERIOR COURT, July Term, 1859.} on the fourth Monday in October next.

The undersigned, Justices of the Inferior Court, within and for the County of Houston, would respectfully represent that they have been duly served with a Writ of Mandamus, which issued in Chambers, from the honorable Henry G. Lamar, Judge of the Superior Courts of the Macon District, on the fifteenth day of August, eighteen hundred
and fifty-nine, them commanding and requiring at the term of the Inferior Court, then next to be helden, (and which was held in said County of Houston, on the fourth Monday in July, eighteen hundred and fifty-nine,) to cause to be received and recorded a certain Verdict, in the Petition of John Doe, said to have been rendered in a certain action of Assumpsit, in which said John Doe is Plaintiff, and Richard Roe is Defendant, pending in said Inferior Court, and to render final judgment thereon, or to show cause to the contrary thereof. Which Writ was and is, in the words and figures following, to wit: [here set out the Writ.] And that they did not, at the last term of said Inferior Court, cause said Verdict to be recorded in said cause, nor proceed to final judgment therein,—and for cause of such their omission to do the same, they assign and submit the following reasons, to wit: [here set out the reasons for not allowing the Verdict to be received and recorded, etc., fully and at length.]

Given under our hands and official signatures,

Charles Anderson, J. J. C.
John H. Ragin, J. J. C.
John D. Winn, J. J. C.
William F. Postell, J. J. C.
William T. Swift, J. J. C.

Attest—

John H. King, Clerk.

Verification of the Return.

STATE OF GEORGIA. In person appeared before the undersigned, Houston County.

Charles Anderson, John H. Ragin, John D. Winn, William F. Postell and William T. Swift, Justices of the Inferior Court of the County aforesaid, and, being duly sworn, say, that the facts contained in the above Answer, so far as they relate to the act or deed of deponents, are true of their own knowledge; and, so far as they relate to the act or deed of any other person, they believe them to be true.

Sworn to and subscribed, before me, this July 20, 1859.

James Mack, J. P.

Charles Anderson.
John H. Ragin.
John D. Winn.
William F. Postell.
William T. Swift.

DECLARATION, PLEA, ETC.

79. Sec. VIII. All suits of a civil nature, cognizable in the said courts, respectively, shall be by petition to 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 or her attorney; and to which petition the clerk shall annex a process, signed by such clerk, and bear test in the name of one of the judges or justices of such court; directed to the sheriff, requiring the defendant or defendants to appear at the court to which the same shall be made returnable; and shall be served on the defendant or defendants at least twenty [see 198 and 206] days when served, before the return thereof, by delivering a copy of such petition and process to the defendant or defendants, or leaving such copy at his, her or their most notorious place or places of residence. And if any such process shall be delivered to the sheriff, or other officer, whose duty it shall not be served.
be to execute the same, so late that it cannot be served in manner aforesaid, twenty days before the sitting of the court to which it shall be returnable, such process shall not be executed, but the officer shall return the same with the truth of the case. And if any original civil process shall be taken out within twenty days of the next court, the same shall be made returnable to the next court to be held after the expiration of the said twenty days, and not otherwise. And all process issued and returned in any other manner than that herein-before directed, shall be and the same is hereby declared to be null and void.

An Act to alter and amend the 9th sec. of the Judiciary Act of 1799; and the 1st sec. of an act relative to Executions, passed Dec. 14, 1811.

Approved, Dec. 22, 1840.

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

81. Sec. IX. 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 defense, or answer, in writing, which shall plainly, fully and distinctly, set forth the cause of his defense, 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 defense:

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 proceedings. And no petition, answer, return, process, judgment, or other proceeding in any civil cause, shall be abated, arrested, quashed or reversed, for any defect in matter of form, or for any clerical mistake or omission, [not affecting the real merits of the cause.] but the court, on motion, shall cause the same to be amended without any additional cost, at the first term; and shall proceed to give judgment according to the right of the cause, and matter of law; as it shall appear to the said court, without regard to such imperfections in matter of form, clerical mistake or omission. And no dilatory answer shall be received or admitted, unless affidavit be made of the truth thereof.

82. 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 plaintiffs' 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. [But see Rents.]

And no cause whatsoever, depending in said courts, shall be continued more than one term, at the instance of the same party. [See Continuance.]

83. 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 in such county, against the defendant or defendants who may reside therein, in manner directed by this act; and shall also issue another original and copy or copies thereof, for the defendant or defendants resident in other county or counties. And it shall be the duty of the plaintiff, his agent or attorney, to cause such original and copies to be delivered to the sheriff, or other officer, in such other county or counties, who shall execute and return the same to the court from whence they issued, in such manner as is herein-before directed, and on such return, the plaintiff may proceed as in other cases.

An Act to explain and enforce the Judiciary act of 1799, as respects Special Pleadings in the several courts of law in this State.—Approved Dec. 19, 1818.

Whereas, the said Judiciary was intended for the purpose of bringing parties litigant, to a speedy judicial decision, without delay and with as little costs as practicable. And it was thereby intended, that the small omissions of parties, clerks or sheriffs, not affecting the real merits of the cause, should in all cases substantially set out, be amended on motion without delay or costs. And it having grown into practice in said courts, to give or grant a term, and sometimes non-suit, for the smallest omissions of the officers of the said courts; and as a further increase of the said practice may lead us back to all that tedious and expensive labyrinth of special pleadings which the said judiciary intended to avoid—

84. Sec. I. Be it enacted, &c., That in every case where there is a good and legal cause of action, plainly and distinctly set forth in the petition, and there is, in substance, a copy served on the defendant or defendants, or left at their most notorious place of abode, every other objection shall be, on motion, amended without delay or additional costs. [See 88 and 112.]

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

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

Declaration.

STATE OF GEORGIA,

Houston County.

} To the Superior Court of said County.

The Petition of John Doe, showeth that Richard Roe, of said County, is indebted to your Petitioner, the sum of five hundred dollars, besides interest: for that whereas, the said Richard Roe, on the first day of May, in the year of our Lord eighteen hundred and fifty-eight, made
his certain Promissory Note, and then delivered said Promissory Note to one Charles Smith, (which is here in Court to be shown;) whereby, ten days after date of said Note, the said Richard Roe promised to pay said Charles Smith, or bearer, the sum of five hundred dollars, for value received. And the said Charles Smith, to whom said Note was made payable, afterwards, to wit, on the day and the year first aforesaid, duly endorsed and delivered said Note to your Petitioner, in a fair course of trade and for a valuable consideration. By reason whereof, the said Richard Roe became liable to pay your petitioner the aforesaid sum of money, according to the tenor and effect of said Note. And being so liable, in consideration thereof, afterwards, to wit, on the day and year first aforesaid, said Richard Roe undertook to pay your Petitioner the same, according to the tenor and effect of said Note. Yet the said Richard Roe although so indebted, and to pay the said sum of money often requested, has not paid the same, but the same to pay has heretofore wholly refused, and still does refuse, to the damage of your Petitioner one thousand dollars. Wherefore, your Petitioner brings suit and prays Process may issue, requiring the said Richard Roe, personally or by attorney, to be and appear at the next Superior Court to be held in and for said County, to Answer your Petitioner in an action of Assumpsit, etc.

James A. Pringle, P't's Att'y.

Form of a Declaration of second or subsequent Endorser, against Maker and first Endorser, on a Note not Bankable.

For that whereas, the said C D, heretofore, to wit, on the first day of May, in the year 1859, made his certain Promissory Note in writing, bearing date the day and year aforesaid, and thereby, then and there, promised to pay two months after the date thereof, to one E F, or order, the sum of fifty dollars, for value received; and then and there, delivered the said Promissory Note, to the said E F. And the said E F, to whom or to whose order, the payment of the said sum of money, in the said Note specified, was to be made, after the making of the said Note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, endorsed the said Note, by which said endorsement, he the said E F, then and there ordered and appointed the said sum of money in the said Note specified, to be paid to your Petitioner; and then and there delivered the said Note to your Petitioner, for a valuable consideration. By means whereof and by force of the statute, in such case made and provided, the said C D and the said E F, Defendants, as aforesaid, then and there became liable to pay to your Petitioner, the said sum of money in the said Note specified, according to the tenor and effect of the said Note. And being so liable, they the said Defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook, and then and there, faithfully promised to pay to your Petitioner, the said sum of money, in the said Note specified, according to the tenor and effect thereof. Yet your Petitioner avers, etc. etc.
Endorsement by the Clerk.

Filed in Office, this March 5, 1859.

WILLIAM H. MILLER, Clerk.

Process annexed by the Clerk.

STATE OF GEORGIA.

Houston County.

JOHN DOE

vs.

RICHARD ROE.

Assumpsit in the Superior Court of said County.

The Defendant is hereby notified and required, personally or by attorney, to be and appear at the next Superior Court, to be held in and for said County, on the fourth Monday in April next: then and there to Answer the Plaintiff's demand in an action of Assumpsit, as in default thereof, the Court will proceed as to justice shall appertain.

Witness, the honorable Henry G. Lamar, one of the Judges of the Superior Courts of said State, this March 5, 1859.

WILLIAM H. MILLER, Clerk.

Return of the Sheriff.

I have executed the within Writ by serving a copy thereof on the Defendant personally, this March 5, 1859.

MADISON MARSHALL, Sheriff.

ANSWER OF THE DEFENDANT.

Plea of Non Est Factum.

JOHN DOE

vs.

RICHARD ROE.

Assumpsit in the Superior Court of said County, April Term, 1859.

And the said Defendant, by his attorney Thomas Felder, comes and defends the wrong and injured, when, etc. and says, that he did not himself make the said Note, in the Plaintiff's Declaration described; nor did he authorize, instruct or direct any other person to make said Note for him. And of this he puts himself upon the country.

THOMAS FELDER, Def't's Atty.

In person appeared before the undersigned, Richard Roe, Defendant in the above-stated suit, who being duly sworn, saith, that the facts contained in the foregoing Plea, are just and true as therein stated.

Sworn to and subscribed, before me, this April 25, 1859.

James Mack, J. P.

RICHARD ROE.

Plea to the Jurisdiction.

JOHN DOE

vs.

RICHARD ROE.

Assumpsit in the Superior Court of said County, April Term, 1859.

And the said Defendant, in his own proper person, comes and says
that this Court ought not to have or take further cognizance of the suit above stated, because he says, that at the time of the commencement of said suit, to wit, the fifth day of March, eighteen hundred and fifty-nine, the Defendant resided in the County of Bibb, in said State, and not in the County of Houston; or elsewhere, out of said County of Bibb; and this he prays may be inquired of by the Court.

RICHARD ROE.

Richard Roe, the Defendant in the above-stated case, in person appears before the undersigned, and makes oath and says, that the above Plea is true in substance and fact.

Sworn to and subscribed,
before me, this April 25, 1859.  
James Mack, J. P.

RICHARD ROE.

Plea of Misnomer.

JOHN DOE  vs.  GEORGIA—HOUSTON COUNTY.

RICHARD ROE.  Assumpsit in the Superior Court of said County.

April Term, 1859.

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

WILLIAM ROE.

In person appeared before the undersigned, William Roe, and after being sworn saith, that the facts stated in the above Plea, are just and true.

Sworn to and subscribed,
before me, this April 25, 1859.  
James Mack, J. P.

WILLIAM ROE.

An Act to authorize amendments to be made instanter, in cases of Misnomer, in all Judicial Proceedings. And for other purposes.—Approved, Feb. 22, 1850.

87. Sec. I. Be it enacted, That from and after the passage of this act, all misnomers made in writs, petitions, bills or other judicial proceedings, on the civil side of the court, shall be amended and corrected instanter, without working any unnecessary delay to the party having made the same.

88. Sec. II. In suits by or against partners, or when any two or more persons sue or are sued in the same action, and the name of any person who ought to be joined in such action as plaintiff or defendant, is omitted, on ascertaining the same, the omission shall be amended instanter.
Plea of Infancy.

JOHN DOE vs. RICHARD ROE.

Assumpsit in the Superior Court of said County.

April Term, 1859.

And the said Richard Roe, by Thomas Felder, his attorney, [or if the Defendant be still an Infant, say "by James A. Pringle, admitted by the Court, as Guardian of said Richard Roe, to defend for the said Richard Roe who is an Infant under the age of twenty-one years,"] comes and defends the wrong and injury, when, etc. and says, that the said John Doe ought not to have or maintain his aforesaid action against him, because he says, that the said Richard Roe at the time of making the several supposed promises and undertakings in the said writ mentioned, was an infant within the age of twenty-one years, to wit, of the age of nineteen years, and this he the said Richard Roe is ready to verify and prove: wherefore, he prays judgment, if the said John Doe ought to have or maintain his aforesaid action against him, etc.

THOMAS FELDER, Def't's At't'y.

An Act to make void the Contracts of Minors, with the exceptions therein stated.—Approved Dec. 11, 1858.

89. Sec. 1. Be it enacted, That all contracts of minors, shall be absolutely void, except for necessaries; and that no contract of a minor shall be good for necessaries, unless the case, or cases, is or are such that the parent or guardian of such minor, shall refuse or fail, and does refuse and fail, to supply such minor with necessaries; and the burden of proof, of which fact, shall be upon the party furnishing such necessaries.

An Act more effectually to protect the interests of parties Plaintiffs, in suits commenced against Joint-Obligors or Promissors.—Approved Dec. 19, 1823.

90. In all cases which hereafter may be commenced against joint-obligors or promissors, and any one or more of the parties, defendants, may plead infancy, and such plea be sustained, the action shall not, as heretofore, abate, but the court shall award judgment, as in cases of non-suit, in favor of the party or parties so pleading, and permit the plaintiff to proceed against the other defendant or defendants to said suit, without further delay or costs.

Plea of the Statute of Limitation.

JOHN DOE vs. RICHARD ROE.

Assumpsit in the Superior Court of said County.

April Term, 1859.

And for further answer in this behalf, the defendant says, that the Plaintiff ought not to have or maintain his aforesaid action against him, because he says, that he the said Richard Roe, [or if by an Executor or Administrator, say, "the said Richard Roe, deceased,"] did not at any time within six years, next before exhibiting of the said action of the said Plaintiff in this behalf, undertake or promise, in manner or form as the said Plaintiff hath thereof complained against him the said defendant. And this he is ready to verify and prove as this honorable Court may order and direct, etc.

JAMES A. PRINGLE, Def't's At't'y.
Another Form.—Because he says, that the supposed cause of action in the said writ mentioned, did not accrue to the said Plaintiff at any time within six years before the exhibiting of the writ of the said Plaintiff against him the said defendant in this behalf, in manner and form as the said Plaintiff hath thereof complained against him the said defendant. And this he is ready to verify and prove: wherefore, etc.

Plea of set-off.

GEORGIA—HOUSTON COUNTY.

JOHN DOE } Assumpsit in the Superior Court of said County.
RICHARD Roe } April Term, 1859.

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

THOMAS FELDER, Def't's Att'y.

An Act to enable Defendants in actions at common-law, to give in evidence, a Partial Failure of the Consideration of the Contracts upon which such action may be brought.—Approved Dec. 26, 1836.

91. Sec. I. From and after the passage of this act, whenever any action or actions shall be commenced at common-law, founded upon any contract or contracts, it shall and may be lawful for the defendant or defendants to such action or actions, upon the trial thereof, to give in evidence to the jury, that the consideration or considerations, upon which said contract or contracts, are or were founded, have partially failed. Any thing in any law or custom, to the contrary notwithstanding: Provided, that such plea of partial failure shall only be pleaded in such cases, under such circumstances, and between such parties, as would now admit and allow the plea of total failure of consideration.

Sec. II. [Repeals conflicting acts.]
Plea of Partial Failure of Consideration.

JOHN DOE vs. GEORGIA—HOUSTON COUNTY. Assumpsit in the Superior Court of said County. April Term, 1859.

And for further answer in this behalf the Defendant saith, that the consideration for which the Note, the subject-matter of the Plaintiff's action, was given, has partially failed in this, to wit, for that the said Note was given for a certain Negro Boy named Step, of the age of seventeen years; which Negro Boy, the Plaintiff, by his Bill of Sale, dated the first day of May, in the year eighteen hundred and fifty-eight, sold and warranted to Defendant to be sound and well, (which Bill of Sale is here in Court to be shown.) And the Defendant avers that at the time of the sale of the said Negro Boy to him by the Plaintiff, and before, he was unsound and unwell, to wit, that said Negro Boy was and is accustomed occasionally to having fits. And Defendant avers that by reason of said Negro Boy being diseased, as aforesaid, he is greatly reduced in value, to wit, the sum of five hundred dollars: wherefore, Defendant says, that the consideration of said Note has failed to the amount of five hundred dollars, of which partial failure of consideration the Plaintiff, then and there, had notice. And this the Defendant is ready to verify and prove, etc.

JAMES A. PRINGLE, Def't's Atty.

Plea of Total Failure of Consideration.

JOHN DOE vs. GEORGIA—HOUSTON COUNTY. Assumpsit in the Superior Court of said County. April Term, 1859.

And for further Answer in this behalf, the Defendant saith, that the consideration for which the Note, the foundation of the Plaintiff's suit, was given, has wholly and entirely failed, in this, to wit, for that said Note was given for the purchase of a certain Negro Boy named Step, about seventeen years of age; which Negro Boy the Plaintiff (by his Bill of Sale, here in Court to be shown, dated the first day of May, eighteen hundred and fifty-eight,) sold and warranted to be sound and well: which said Negro Boy Defendant avers was, at the time of the purchase aforesaid, and previously, unsound and unwell, in this, to wit, that said Negro Boy is addicted periodically, that is, monthly, to having fits, which render him unserviceable. By reason whereof, said Negro Boy, was heretofore, and now is, of no value whatever to Defendant. Which failure of consideration the Plaintiff, then and there, had notice: and this the Defendant is ready to verify and prove, etc.

JOHN M. GILES, Def't's Atty.

Plea of Ne Ungues Executor.

JOHN DOE vs. GEORGIA—HOUSTON COUNTY. Assumpsit in the Superior Court of said County. April Term, 1859.

And for further Plea in this behalf, the Defendant says, that the Plaintiff ought not to have or maintain his aforesaid action against
him, because he says, that he, Defendant, never was Executor of the Will and Testament of Charles Smith, deceased; nor ever administered of the goods, chattels and estates, which were of the said Charles Smith, deceased, at the time of his death, as Executor of the Will and Testament of said Charles Smith, deceased, in manner and form as the Plaintiff hath in his said Writ, in this behalf, alleged, etc.

THOMAS FELDER, Def't's Atty.

Plea of Plene Administravit.

JOHN DOE, vs.
RICHARD ROE, Ex'or of C. Smith, dec.

GEORGIA—HOUSTON COUNTY.
Assumpsit in the Superior Court of said County.
April Term, 1859.

And for further Plea in this behalf, the Defendant says, that the Plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that he, the Defendant, hath fully administered, all and singular, the goods, chattels and estates, rights and credits, which were of said Charles Smith, deceased, at the time of his death, and which ever came to the hands of the Defendant, as Executor as aforesaid, to be administered. And the Defendant further avers, that he hath not, nor on the day of the commencement of the action of the Plaintiff, in this behalf; or at any time since, had any goods or chattels or estates which were of said Charles Smith, deceased, at the time of his death, in his hands, as Executor, as aforesaid, to be administered. And this the Defendant is ready to verify and prove: wherefore, he prays judgment, if the said Plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

THOMAS FELDER, Def't's Atty.

Plea of Plene Administravit Prater.

JOHN DOE, vs.
RICHARD ROE, Ex'or of C. Smith, dec.

GEORGIA—HOUSTON COUNTY.
Assumpsit in the Superior Court of said County.
April Term, 1859.

And for further Answer in this behalf, the Defendant, Executor of the Will and Testament of Charles Smith, deceased, saith, that said Plaintiff ought not to have or maintain his aforesaid action against him, except as to the sum of one hundred dollars, because he says, that he, the said Defendant, hath fully administered, all and singular, the goods, chattels and estates, which were of the said Charles Smith, deceased, at the time of his death, and which ever came to the hands of the Defendant, to be administered; except goods and chattels, rights and credits, of the value of one hundred dollars. And that he, the Defendant, hath not, nor on the day of the commencement of the action of the Plaintiff, in this behalf; or at any other time since, had any goods or chattels which were of the said Charles Smith, deceased, at the time of his death, in his hands to be administered, except said goods and chattels of the value aforesaid. And this he is ready to verify and prove: wherefore, he prays judgment, if the said Plaintiff ought to have or maintain his aforesaid action against him, except as to the sum of one hundred dollars, etc.

JOHN M. GILES, Def't's Atty.
Plea of the General Issue.

JOHN DOE
vs.
RICHARD ROE.

GEORGIA—HOUSTON COUNTY.
Assumpsit in the Superior Court of said County.
April Term, 1859.

And now, at the term of the Court aforesaid, comes the Defendant in said case, by his attorney, James A. Pringle, and defends the wrong and injury, when, etc., and for Answer saith, that the said Plaintiff ought not to have or maintain his aforesaid action against the Defendant, because Defendant says, that he did not undertake and promise, in manner and form, as the Plaintiff, in his Writ, hath complained against him. And of this he puts himself upon the country, etc.

JAMES A. PRINGLE, Def't's Atty.

Note given in Evidence.

Ten days after the date hereof, I promise to pay Charles Smith, or bearer, five hundred dollars for value received, this May 1, 1858.

RICHARD ROE.

Verdict of the Jury.

We, the jury, find for the Plaintiff the sum of five hundred dollars for his principal debt, with interest on that sum from the eleventh day of May, eighteen hundred and fifty-eight, and costs of suit.

MARCUS KUNZE, Foreman.

Confession of Judgment by the Defendant.

April Term, 1859. I confess Judgment to the Plaintiff for the sum of five hundred dollars principal debt, with interest from the eleventh day of May, eighteen hundred and fifty-eight, and costs of suit; reserving the right of appeal.

RICHARD ROE, Def't.

Judgment of the Court.

HOUSTON SUPERIOR COURT, April Term, 1859.

Whereupon, it is ordered, considered and adjudged by the Court here, that the Plaintiff do recover against the Defendant, the sum of five hundred dollars, for his principal debt. The sum of forty dollars, for his interest up to this date, and the sum of fifteen dollars, for his costs in this behalf, laid out and expended; and the Defendant in mercy, etc. Judgment signed this April 25, 1859.

THOMAS FELDER, Plff's Atty.

An Act to simplify and curtail Pleadings at Law.—Approved Dec. 27, 1847.

92. Sec. I. Be it enacted, That from and after the passage of this act, the form of a declaration for the recovery of real estate and mesne profits, may be as follows; (any law, usage, or practice, to the contrary notwithstanding,) to wit—
STATE OF GEORGIA, } To the Superior Court for said County. The Peti-
{tion of A B, showeth that C D, of said County, is
in possession of a certain tract of Land, in said County, (here describe
the Land,) to which your Petitioner claims Title. That the said C D,
has received the Profits of said Land, since the day of
18 of the yearly value of dollars; and refuses
to deliver the said Land to your Petitioner, or to pay him the profits
thereof. Wherefore, your Petitioner prays Process may issue, requiring
the said C D, to be and appear at the next Superior Court, to be held
in and for said County, to Answer your Petitioner's Complaint.

93. Sec. II. The form of an action for the recovery of Personal Prop-
erty, may be as follows, to wit—

STATE OF GEORGIA, } To the Court of said County. The Peti-
{tion of A B, showeth that C D, of said County, is
in possession of a certain (here describe the property) of the value of
dollars, to which your Petitioner claims the Title. That the
said C D, has enjoyed the Profits of the same since
That the said is of the yearly value of dollars.
And that the said C D, refuses to deliver said to your Peti-
tioner, or to pay him the Profits thereof. Wherefore, your Petitioner
prays Process may issue, requiring the said C D, to be and appear at the
next Court to be held in and for said County, to Answer your
Petitioner's Complaint.

94. Sec. III. The form of an action to recover money on a note, bill,
bond, receipt, or written promise of any description; by adding a copy
of which, with the endorsers' names, (if any,) and credits, shall be appended.
(And when the suit is on a bond, the breach from which arises the right
of action, shall be set out plainly;)—may be as follows, to wit—

STATE OF GEORGIA, } To the Court of said County. The Peti-
{tion of A B, showeth that C D, of said County, is
indebted to him in the sum of dollars, besides interest, on a
dated , and due ; which the said
C D refuses to pay. Wherefore, your Petitioner prays Process may issue,
requiring the said C D, to be and appear at the next Court
for said County, to Answer your Petitioner's Complaint.
Provided nevertheless, that when any defendant shall, at the ap-
pearance term of such cause, demand oyer of any note, bill, bond, receipt,
or other instruments sued on, the plaintiff shall be compelled to produce
the same to the defendant, for the purpose of examination.

95. Sec. IV. The form of an action on an account, may be as follows,
to wit—

STATE OF GEORGIA, } To the Court of said County. The Peti-
{tion of A B showeth that C D, of said County, is
indebted to your Petitioner dollars, on an Account, as will
fully appear by reference to a bill of particulars, heretofore annexed; which
Account the said C D neglects to pay. Wherefore, your Petitioner
prays Process may issue, requiring the said C D, to be and appear at the
next Court, to be held for said County, to Answer your Peti-
tioner's Complaint.

96. Sec. V. The form of an action to recover money on a judgment,
may be as follows, to wit—
STATE OF GEORGIA,} To the Court for said County. The Pet-

petition of A B, showeth that C D, of said County, is indebted to your Petitioner dollars, besides interest, on a Judgment obtained by your Petitioner, against the said C D, at a (name the Court) Court, held on the day of 18 , in the (County, District, or Town) of , in the State of , as will fully appear by reference to an Exemplification of the proceedings in said case. That the said Judgment is unsatisfied, and that the said C D neglects to pay the same. Wherefore, your Petitioner prays Process may issue, requiring the said C D to be and appear at the next Court, to be held for the County of , then and there, to Answer the Plaintiff's Complaint.

97. Sec VI. The form of an action for breach of warranty, on a deed, may be as follows, to wit—

STATE OF GEORGIA,} To the Court of said County. The Pet-

petition of A B, showeth that C D is indebted to him in the sum of dollars; for that, on the day of 18 , the said C D, executed to your Petitioner, a Warranty Deed, to a certain tract of Land, (describe the Land,) for the sum of dollars, paid by your Petitioner to the said C D. That your Petitioner has been evicted from said lot of Land, and the said C D, refuses to indemnify your Petitioner for his Damage in that behalf. Wherefore, your Petitioner prays Process may issue, requiring the said C D, to be and appear at the next Court, for said County, to Answer your Petitioner's Complaint.

98. Sec VII. No departure from the before-prescribed forms, shall work a non-suit, provided the plaintiff shall plainly and distinctly set forth his cause of action.

99. Sec VIII. It shall and may be lawful, in pleading, to set out amounts and dates in figures, or what is sometimes called the Arabic Numerals.

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

AN ACT to curtail and simplify Civil Pleadings.—Approved Jan. 29, 1850.

100. Sec I. Be it enacted, That from and after the passage of this act, the form of an action for words, may be as follows, to wit—

STATE OF GEORGIA,} To the honorable Court of said County. The Pet-

ition of A B, showeth that C D, of said County, has injured and damaged your Petitioner; in the sum of dollars, by falsely and maliciously saying, of and concerning your Petitioner, on the day of 18 , the following false and malicious words, to wit:

Wherefore, your Petitioner prays Process may issue, requiring the said C D, to be and appear at the next Court, to be held in and for said County, then and there to Answer your Petitioner's Complaint.

101. Sec II. No plaintiff shall be non-suited for want of form, who shall set forth his cause of action as plainly and distinctly as the charge of slander is set forth in the form of declaration by the first section of this act prescribed.

AN ACT pointing out the mode of collecting a certain description of debts therein mentioned.—Approved Dec. 19, 1848.
A Summary—

Provided, anything in this act may be construed as to authorize the bringing of any action, of any kind whatever, against the representative or representatives of any estate or estates, until twelve months after the probate of the will, or the granting of letters of administration on such estate or estates.

**AN ACT to regulate the mode of prosecuting actions against Contractors and Co-Partners, in certain cases.**—Approved Dec. 18, 1820.

Whereas, doubts have arisen as to the mode of prosecuting actions against joint-contractors and co-partners, when one or more cannot be found, or reside without the limits of this State, for remedy whereof—

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

104. Sec. II. Judgments so obtained shall bind, and execution may be levied, on the joint or co-partnership property; and also, the individual property, real and personal, of the defendant or defendants, who have been served with a copy of the process; but shall not bind or be levied on the individual property of the defendant or defendants who are not served with process.

Sec. III. All laws and parts of laws repugnant to this act, are hereby repealed.

**AN ACT to facilitate the recovery of Personal Property, in certain cases.**—Approved Dec. 24, 1827.

Whereas, it frequently happens that suits in the different courts of law and equity in this State for personal property, continue for a number of years, and that after the commencement and before the end of said suits, the property in dispute increases, or has issue, which cannot be recovered in any other way than by resorting to a new action; for remedy whereof—

105. **Be it enacted, That while any suit or action is now pending, or may hereafter be instituted, in any court of law or equity in this State, for personal property, the issue of said property born or to be born after the commencement of said suit or action, shall and may be recovered in the said suit or action. And it shall be the duty of the court to allow the declaration or bill to be amended at any stage of the said suit or action, so as to include the said issue so born or to be born. Any law, usage or practice to the contrary notwithstanding.**
An Act to authorize Plaintiffs in Ejectment to recover such Mesne Profits as they may be entitled to in said action of Ejectment, by way of Damages; and to prevent a separate action for Mesne Profits.—Approved Dec. 19, 1834.

106. Sec. I. It shall be lawful for all plaintiffs in ejectment to add a count or counts in their writ of ejectment, and to submit evidence to the jury, and to recover by way of damages, all such sum or sums of money to which they may be entitled by way of mesne profits, together with the premises in dispute.

107. Sec. II. It shall be the duty of the several clerks of the superior courts, to incorporate in the execution of habere facias possessionem, a clause directing the sheriff to collect all such sums of money as, by the finding of the jury, shall have been awarded to the plaintiff in ejectment as mesne profits.

108. Sec. III. No plaintiff or plaintiffs in ejectment, in cases which may hereafter be instituted, shall be permitted to have and maintain a separate action in their behalf, for mesne profits which have accrued, or may accrue, to him or them, from the premises in dispute.

109. Sec. IV. In case an action of ejectment be brought by the defendant in the first action of ejectment, for the premises recovered of him, and a verdict obtained in his favor, it shall be lawful for him to institute an action on the case for such damages as may have been collected from him as mesne profits in the first action; and under such action, it shall be lawful for him to give in evidence the verdict obtained by him in the second action; which shall be deemed and taken to prevent the judgment obtained in the first action, as operating an estoppel.

Action of Ejectment.

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

Houston County.

The Petition of John Doe, respectfully showeth, that he has sustained damage of Richard Roe, of said County, the sum of five thousand dollars; for that the said Richard Roe, heretofore, to wit, on the first day of January, eighteen hundred and fifty-five, with force and arms, in said county, entered into a certain lot of land, with its appurtenances, to wit, number forty-nine, in the tenth district of said county, containing two hundred two and a half acres, more or less, (agreeably to original survey) one hundred acres of which are well improved; which Charles Smith had demised to your petitioner for a term which has not yet expired, and ejected Petitioner from his said Farm; and other wrongs and injuries, then and there did, to the great damage of Petitioner, and against the peace and dignity of said State. And thereupon, Petitioner by James A. Pringle, his Attorney, complains, that whereas the said Charles Smith, on the said first day of January, eighteen hundred and fifty-five, had demised the said lot of land, with its appurtenances, to Petitioner, to have and to hold the same, to Petitioner and his assigns, from the said first day of January, eighteen hundred and fifty-five, for and during and unto the full end and term of ten years, from thence next ensuing, and fully to be completed and ended. By virtue of which said demise, Petitioner entered into the said lot of land with its appurtenances, and became and was thereof possessed, for the said term so to him thereof granted. And Petitioner being so thereof pos-
sessed, the said Richard Roe, afterwards, to wit, on the first day of January, eighteen hundred and forty-six, with force and arms, &c., entered into the said lot of land with its appurtenances, which the said Charles Smith had demised to Petitioner, in manner and for the term aforesaid, which has not yet expired, and ejected Petitioner from his said Farm, and other wrongs and injuries to Petitioner, then and there did, to the great damage of Petitioner and against the peace of said State; wherefore, Petitioner saith that he is injured and hath sustained damage of said Richard Roe to the value of four thousand dollars.

And Petitioner avers that he hath sustained other and further damage of said Richard Roe, to the amount of one thousand dollars, for that the said Richard Roe, heretofore, to wit, on the first day of January, eighteen hundred and fifty-six, with force and arms, &c., broke and entered into lot of land number forty-nine, in the tenth district of said County, (with its appurtenances,) containing two hundred two and a half acres, agreeably to original survey, one hundred acres of which are well improved, and ejected and expelled, put out and amoved Petitioner from his possession and occupancy thereof, and kept and continued Petitioner so expelled and amoved for a long space of time, to wit, from the said first day of January in the year of our Lord eighteen hundred and fifty-six, until the day and year of the institution of this action, and still keeps Petitioner amoved and put out of the possession and occupancy of said lot of land; and during that time took and had, (and still takes and has,) and received to his own use and benefit, all the issues and profits of said lot of land with its appurtenances, being of great yearly value, to wit, of the yearly value of two hundred dollars: whereby Petitioner, during all the time aforesaid, not only lost the issues and profits of said lot of land with its appurtenances, but was deprived of the use and means of cultivating the same, and was forced and obliged to, and did necessarily, lay out and expend divers large sums of money, amounting in the whole to the sum of five hundred dollars, in and about the recovering of the possession of the said lot of land with its appurtenances; and other wrongs and injuries to Petitioner, then and there, did against the peace of said State, and to the damage of Petitioner one thousand dollars: wherefore, Petitioner brings suit and prays Process may issue, requiring said Richard Roe, personally or by Attorney, to be and appear at the Superior Court to be held in and for said County, on the fourth Monday in April next, then and there, to Answer Petitioner in an action of Trespass and Ejectment, and for Mesne Profits. And Petitioner will ever pray, &c.

James A. Pringle, Plv's At'y.

Note.—The pleader will perceive that there is but one demise laid in the above Writ. Where there are more Conveyances than one, a separate and independent Demise should be laid upon each. When it is necessary to have more than one Demise in the Declaration, commence the second, third, &c., thus: "And whereas, also, the said Richard Roe, on the day and year first aforesaid, with force and arms, &c., entered into another lot of land with its appurtenances, to wit," &c.

Entry by the Clerk on the back of the Writ.

Filed in Office, this 15th day of May, 1859.

William H. Miller, Clerk.
JUDICIARY.—DECLARATION, PLEA, ETC.

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Process annexed by the Clerk.

STATE OF GEORGIA, {  
Houston County.  

To the Sheriff of said County—Greeting.

The Defendant Richard Roe, is hereby notified, personally or by Attorney, to be and appear at the next Superior Court, to be held in and for said County, on the fourth Monday in April next, then and there to Answer the Plaintiff's demand, in an action of Trespass and Ejection, and for Mesne Profits, as in default thereof the Court will proceed as to justice shall appertain.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 15, 1859.

WILLIAM H. MILLER, Clerk.

Service by the Sheriff.

Served the defendant, personally, with a copy of this Writ. This May 16, 1859.

MADISON MARSHALL, Sheriff.

Notice to Appear.

PERRY, May 17, 1859.

Mr. James Johnson:—I am informed that you are in possession of, or claim title to, the premises in the accompanying Writ of Trespass and Ejection, and for Mesne Profits, mentioned, or some part thereof; and I being sued, in this action, as a casual ejector only, and having no claim, or title, to the same, do advise you to appear at the next term of the Superior Court to be held in and for the County of Houston, on the fourth Monday in April ensuing, by some Attorney of said Court, then and there; by Rule of the same Court, to cause yourself to be made Defendant in my stead; otherwise, I shall suffer judgment therein to be entered against me, by default, and you will be turned out of possession. Yours, &c.,

RICHARD ROE.

Consent Rule.

JOHN DOE

On the demise of Smith, for lot of land number forty nine, in the tenth district of Houston County, &c.

RICHARD ROE, Casual Ejector.

Trespass and Ejection, and for Mesne Profits, April Term, 1859.

On the consent of the Attorneys for both parties, in the above case, it is ordered by the Court, that James Johnson be made Defendant in the stead and place of the now Defendant Richard Roe, and do, forthwith, appear at the suit of the Plaintiff, and forthwith, plead thereunto, not guilty; and upon the trial of the issue, confess lease, entry and ouster, and insist upon the title only; otherwise, let judgment be entered for the Plaintiff against the now Defendant Richard Roe, by default. And if upon the trial of the said issue, the said James Johnson shall not confess lease, entry and ouster, whereby the Plaintiff shall not be
withheld from the Plaintiff by the Defendant, whereof the Defendant able further to prosecute his writ against the said James Johnson, then no costs shall be allowed for not further prosecuting the same, but the said James Johnson shall pay costs to the Plaintiff, in that case to be taxed. And it is further ordered, that if upon the trial of the said issue, a verdict shall be given for the said James Johnson, or it shall happen that the Plaintiff shall not further prosecute, by said writ, for any other cause than for not confessing lease, entry and ouster, then the lessor of the Plaintiff shall pay to the said James Johnson, costs in that case to be adjudged.

James A. Pringle, Pl't's At'y.
Sam'l D. Killen, Def't's At'y.

Plea of the Defendant.

James Johnson, Def't.
John Doe, on the Demise of Smith.

April Term, 1859. Trespass and Ejectment and for Mesne Profits.

And the said Defendant, by Samuel D. Killen his Attorney, comes and defends the force and injury, when, &c., and says, that he is not guilty of the supposed Trespass and Ejection, above laid to his charge, in manner and form as the said John Doe hath above thereof complained against him. And of this the Defendant puts himself upon the country, &c.

Sam'l D. Killen, Def't's At'y.

Verdict of the Jury.

We, the Jury, find in favor of the Plaintiff, the premises in dispute. We further find the sum of five hundred dollars for Mesne Profits and the costs of suit.

William H. Talton, Foreman.

Judgment of the Court.

Whereupon, it is considered by the Court here, that the Plaintiff do recover against the Defendant, lot of land number forty-nine, in the tenth district of Houston County, with its appurtenances, and that a Writ of Possession issue therefor, in favor of the Plaintiff. And it is further ordered, that the plaintiff do recover against the Defendant, the sum of five hundred dollars for Mesne Profits, and the further sum of twenty dollars for his costs in this behalf laid out and expended; and the Defendant in mercy may, &c. Judgment signed this April 25, 1859.

James A. Pringle, Pl't's At'y.

Habere Facias Possessionem—(Writ of Possession.)

State of Georgia,
Houston County.
John Doe, on the Demise of Smith, vs.
James Johnson, Def't.

To the Sheriff of said County—Greeting:

Whereas, the Plaintiff has, lately in our Superior Court for said County, by the judgment of said Court, recovered of the Defendant lot of land number forty-nine in the tenth district of said County, (with its appurtenances,) containing two hundred two and a half acres, agreeably to original survey; which premises have been and are still, unjustly
is convicted, as appears to us of record. And for as much as it is adjudged in said Court, that the Plaintiff have execution upon his said judgment against the said Defendant, according to the force, form and effect of his said recovery; therefore, we command you, that without delay, you deliver to the Plaintiff, full and quiet possession of the said premises so recovered, with the appurtenances.

We also, command you, that of the goods and chattels, lands and tenements of the Defendant, in your County, you cause to be made the sum of five hundred dollars, which in our same Court, were adjudged to the Plaintiff as Mesne Profits of said premises, against the Defendant; and the further sum of twenty dollars for costs and charges, by the Plaintiff, in that behalf, expended; whereof the defendant is convicted as appears to us, of record. And have you those moneys before our said Court, on the fourth Monday in October next, to render unto the said Plaintiff for his damages aforesaid; and have you then and there, this writ.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 1, 1859.

WILLIAM H. MILLER, Clerk.

Return by the Sheriff.

Executed the within Writ by putting the Plaintiff in quiet possession of the premises therein mentioned, on the fifth day of May, 1859. And have raised the sum of five hundred and twenty dollars, by the sale of the Defendant's property; which sums of money I have now in Court, subject to its order. October 20, 1859.

MADISON MARSHALL, Sheriff.

An Act to amend the Judiciary act of seventeen hundred and ninety-nine, so far as to perfect service, served in actions of Ejectment, for the recovery of Land and Mesne Profits. And to amend an act, entitled, "Complaint for the recovery of Real Estate and for Mesne Profits."—Approved Feb. 20, 1854.

Whereas, it frequently happens that an individual or individuals residing in one County, have their Plantations to extend over the County-line in an adjoining county. And whereas, there is no provision in the statute for the perfecting of legal process on such persons in actions of Ejectment or complaint—

110. Be it therefore enacted, That from and after the passage of this act, it shall be lawful for the clerk of the superior court of the county wherein such land may lie, to issue process in behalf of the plaintiff or plaintiffs, against the defendant or defendants; which process shall be directed to the sheriff; or if the defendant be a sheriff, it shall be directed to the coroner of the county wherein such land may lie, and such sheriff or coroner, as the case may be, shall be authorized to serve and return the same; and such process and service shall be as valid as if the same had been directed to and served by the sheriff or coroner of the county where such defendant or defendants may reside.

An Act to allow any Joint-Tenant, Tenant-in-Common, or other person having a part-interest in Lands or Tenements to maintain a separate action of Ejectment or Trespass, and for other purposes.—Approved March 3, 1856.
111. Sec. I. *Be it enacted*, That from and after the passage of this act, it shall be lawful for any joint-tenant, tenant-in-common, or other person having a part-interest in lands or tenements in this State, to have and maintain an action of ejectment or trespass, for the recovery of such lands or tenements, or injury thereto, without joining with him as plaintiff such other person or persons so interested: *Provided*, that the judgment rendered in all such suits shall in no way affect the rights of any such persons so interested in said lands or tenements, who are not parties to such suits.

An Act to change and simplify the Practice and Pleadings in this State; to provide for the service of Writs of *Seire Facias* in certain cases, and to regulate the admission of Testimony in certain cases.—*Approved Feb. 20, 1854.*

112. Sec. I. *Be it enacted*, That from and after the passage of this act, parties, plaintiffs and defendants, in the superior, inferior and corporation courts of this State, whether at law or in equity, may in any stage of the cause, as matter of right, amend their pleadings in all respects, whether in matter of form or matter of substance only; but in case the party applying for leave to amend pleadings, or to open a default, shall have been guilty of negligence in respect to the matter of amendment or default, the court may compel him to pay his adversary, the costs of the proceeding for which he moves, and may enforce other reasonable and equitable terms on him at discretion, not touching the real merits of the cause in controversy.

113. Sec. II. That in all cases where a defendant duly served with process or subpoena, in any case at law or in equity, shall reside out of this State, or remove therefrom during the pendency of said cause, and the plaintiff or complainant shall die, his or her legal representatives may be made parties by *seire facias*, which *seire facias* shall be served by publication in some of the public gazettes of this State, once a month for four months, previously to the time [term] of the court to which said *seire facias* is made returnable; which publication, made by the sheriff or other executing officer, shall be good and valid, to all intents and purposes.

114. Sec. III. That *on all appeal* trials, or other trials in the last resort, all exceptions to interrogatories, the execution of commissions, commissioners, or answer of witnesses examined under commission (when the commission has been duly returned, and the same ordered or consented to be opened, and been for one day subject to inspection), shall be taken and determined before the case is submitted to the jury, otherwise the testimony shall be received, subject only to the objections that may be made for irrelevancy. All laws, usages and customs to the contrary notwithstanding.

An Act to prescribe the mode of perfecting service, and to regulate the proceedings in cases of *Seire Facias*, on non-residents.—*Approved Dec. 11, 1858.*

Whereas, it frequently happens that persons becoming bail for defendants remove from this State before judgment on *seire facias*, and there being no mode, by the laws of this State, to perfect service on such bail; for remedy whereof—

115. Sec. I. *Be it enacted*, That from and immediately after the passage of this act, writs of *seire facias* may be served, in all bail cases, on non-residents, by public notice in a newspaper (in which the sheriff's sales of the county are published) for thirty days.
116. Sec. II. That after such publication, the plaintiff in *scire facias* Cost how to
may proceed to judgment thereon, as if personal service had been made on the
defendant in *scire facias*; and the cost of publishing said notice be
taxed, in the bill of cost, against said defendant. Any law, usage or custom
to the contrary notwithstanding.

**An Act** to define and determine what stage of a suit at law shall be
regarded the Commencement of Action.—Approved Dec. 23, 1843.

Whereas, conflicting opinions exist in the different Judicial Circuits of
this State, in reference to what stage in the progress of a suit at law, is the
Commencement of Action—

117. Sec. I. *Be it therefore enacted*, That from and after the passage
of this act, the filing of the writ in office shall be regarded and considered the
commencement of action: *Provided*, it shall be the duty of the
clerk to enter on the declaration the time when said declaration is filed
in office; to which entry said clerk shall sign his name.

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

**An Act** to enable parties Plaintiff in suits commenced in the Superior
and Inferior and other Courts of this State to Dismiss their Actions during
the vacation of said Courts, on the same terms they are now authorized
to Dismiss actions at the regular terms of said Courts.—Approved Dec.
23, 1843.

Whereas, inconvenience and delay frequently occur, by reason that parties Plaintiff who commenced suits in the Superior or Inferior and other Courts of this State, cannot dismiss their Actions, except at the regular terms of said Courts—

118. Sec. I. *Be it therefore enacted*, That from and after the passage
of this act, parties plaintiff, who have commenced, or may hereafter com-
mence suits in the superior, or inferior, and other courts of this State, be and they are hereby authorized to dismiss their actions during the vaca-
tion of said courts, on the same terms they are now authorized to dismiss
actions at the regular terms of said courts: *Provided*, that such dismissal
shall be first entered on the docket by the clerk of the court in which said
suit may be pending, during the vacation of said court.

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

**An Act** to enable persons who have claims against Trust-Estates, to re-
cover said Claims in a Court of Law, and to prescribe the manner in
which the same shall be done.—Approved March 5, 1856.

119. Sec. I. When any person has any claim against any trust-estate for services rendered to said estate, or for articles, or properly, or money furnished for the use of said estate; or when a court of equity would render said estate liable for the payment of said claims, it shall be lawful for such person to collect and enforce the payment of such claim in a court of law.

120. Sec. II. The person having such claim, if the same exceeds the sum of thirty [*fifty*] dollars, may file his petition setting forth the grounds of such claim, and also, how and in what manner said estate is liable for the payment of said claim; and also, setting forth the name or names of the trustees and the *cestui-que-trust*. Which petition shall be filed in the office of the clerk of the superior or inferior court, under the same rules and regulations as in ordinary cases at common-law, and the subsequent pro-
ceedings, shall be in all respects, the same.
JUDICIARY.—DECLARATION, PLEA, ETC.

121. Sec. III. The judgment that may be rendered in said case, shall impose no personal liability on the trustee, or in any way render his property liable for the payment of the same; but said judgment shall only bind said trust-estate, and execution shall issue accordingly.

122. Sec. IV. If there is no trustee the *cestui-que-trust* shall be made the defendant, and the proceedings shall be in all respects, the same as when the trustee is the defendant.

123. Sec. V. When the claim does not exceed the sum of thirty dollars, suit may be brought in a justice's court, under the same rules and regulations as in ordinary suits in those courts; saving only, that the summons shall set forth how and in what way, said trust-estate is liable for the payment of said claim. And the judgment rendered in justice's court shall have the same force and effect, as is herein-before prescribed in relation to judgments rendered in the superior and inferior courts.

124. Sec. VI. All executions issued upon judgments rendered under the provisions of this act, shall specify in the body of the execution, the property on which the execution is to be levied, and it shall be levied on no other.

Sec. VII. [Repeals conflicting laws.]

*Declaration, in the Superior or Inferior Courts.*

STATE OF GEORGIA, ) To the Superior Court of said County.
Houston County. ) The Petition of *John Doe* respectfully sheweth, that *Richard Roe* (Trustee of *Mrs. Ann Sikes, a married woman*, of said County,) as Trustee, as aforesaid, owes to and from your Petitioner unjustly detains, the sum of two hundred dollars; for that said *Mrs. Ann Sikes*, for whom said *Richard Roe* is Trustee, has a separate interest and estate in a certain *Plantation* in said County, worked by said Trustee, for the exclusive benefit and advantage of said *Mrs. Ann Sikes*. And your Petitioner avers, that during the year eighteen hundred and fifty-eight, he furnished said *Richard Roe*, Trustee as aforesaid, for the use and benefit of the *Plantation* aforesaid, *four hundred bushels of Corn*, at and for the sum of *fifty cents per bushel*, as will appear by the annexed Bill of Particulars. And your Petitioner avers that said *Plantation (and its appurtenances)* is liable to his claim. And your Petitioner avers, that said *Richard Roe*, Trustee as aforesaid, being so indebted as aforesaid, afterwards, to wit, on the *first day of January eighteen hundred and fifty-nine*, undertook and promised to pay your Petitioner said sum of money whenever thereunto afterwards requested; yet your Petitioner avers, that said *Richard Roe*, Trustee as aforesaid, although often requested has not paid said sum of money, or any part thereof, but the same to pay, hath hitherto neglected and refused, and does still neglect and refuse, to the damage of Petitioner *four hundred dollars*.

Wherefore, Petitioner brings suit and prays Process may issue, requiring said *Richard Roe*, Trustee as aforesaid, to be and appear at the next *Superior Court* to be held in and for said County, to answer your Petitioner in an action of Assumpsit, &c.

*James A. Pringle, Atty pro Petr.*
Bill of Particulars.

1859.
To 400 bushels Corn, at 50 cts per. bushel, 
furnished for the use of the Plantation 
of said Mrs. Ann Sikes, in 1843. . . . $200.00.

John Doe.

AN ACT to abolish the right of Survivorship in Joint-Tenants, in this State.—Approved Dec. 17, 1828.

Whereas, it is doubtful whether the Right of Survivorship, as under the English law, does not still exist in this State, in all Estates of Joint-Tenancy—

125. Be it enacted, That from and after the passage of this act, when two or more persons shall hold and possess any estate of lands, in joint-tenancy, in this State, and one or more of said joint-tenants may depart this life, during the existence of said estate, the title or interest of the deceased joint-tenant, in said estate, shall not go and become the property of the surviving joint-tenant or tenants, as under the English law, but that the same shall be distributed as all other estates are, under the existing laws of this State.

All laws and parts of laws, militating against this act, are hereby repealed.

AN ACT to extend the provisions of the act to abolish the Right of Survivorship in Joint-Tenants, in this State.—Approved Feb. 10, 1854.

126. Be it enacted, That the provisions of the act passed on the seventeenth of December, 1828, entitled "an act to abolish the right of survivorship in joint-tenants, in this State," be and the same is hereby extended and made applicable to personal estate held in joint-tenancy.

JUDGE OF THE SUPERIOR COURT.

AN ACT to alter the times, &c., and to amend certain parts of the act, entitled "an act to amend an act, entitled an act to revise and amend the Judiciary System of this State."—Approved Dec. 5, 1801.

127. Sec. V. In all cases brought in the said superior courts, or either of them, where either of the judges thereof shall be a party, or interested, it shall be the duty of three or more of the justices of the inferior court, to preside at the trial of the same.

AN ACT to authorize the Judges of the Superior Courts in this State to alternate in their districts.—Approved Dec. 8, 1806.

128. It shall and may be lawful for the judges of the superior courts in this State, and they are hereby authorized, to alternate in their districts, from and immediately after the first day of January next. Any law to the contrary notwithstanding.

AN ACT to compel the Judges of the Superior Courts of this State to convene at the Seat of Government in this State, once in each year, for the purpose of establishing uniform Rules of Practice, throughout this State.—Approved Dec. 24, 1821.

129. From and after the next election of judges of the superior courts of this State, that it shall be the duty of the said several judges, to con-
JUDICIARY.—JUDGE OF THE SUPERIOR COURT.

JUDICIARY.—

vener at the seat of government of this State, once in each year, at such
time as they, or a majority of them, may appoint, for the purpose of
establishing uniform rules of practice throughout the several circuits of
this State. And it shall be the duty of the judges so convened, to notify
such of the judges who may be absent, of such rules, or alterations of
rules, as may be established, as aforesaid.

AN ACT to annul and declare inoperative, all Rules of Practice, for the
Superior and Inferior Courts of any Judicial Circuit, which have not
been agreed upon and assented to by a majority of all the Judges of
the Superior Courts, in Convention, for such purposes.—Approved Dec.
29, 1847.

Whereas, by a law of this State, the Judges of the Superior Courts are
authorized to fix and establish Rules of Practice for all the Superior and
Inferior Courts of this State. And whereas, a practice has grown up,
within a few years past, of some of the Circuit Judges establishing Rules,
without the assent and concurrence of their associates in office, thereby
producing a want of uniformity in the Practice, an evil which requires
legislative remedy—

130. Sec. I. Be it, therefore, enacted, That all rules of practice for the
superior and inferior courts, prescribed, or which may be prescribed by
any other authority than that which has, by law, been deputed to all the
judges of the superior courts of Georgia, in convention, be and the same
are hereby declared to be null and inoperative.

131. Sec. XXXIII. It shall be the duty of the judges of the superior
courts, to make a special report annually, to the governor of this State,
previous to the meeting of the General-Assembly, and by him to be sub-
mitted to the legislature, of all such defects, omissions or imperfections in
this code, as experience on their several circuits may suggest.—[See Cobb's
Penal Code, 197.]

AN ACT to prevent [the] Judges of the several Superior Courts in this
State, from making certain charges, or giving their opinions, to or in
hearing of the Jury, and to define the same as Error.—Approved Feb.
21, 1850.

132. Sec. I. Be it enacted, That from and after the passage of this act,
it shall not be lawful for any, or either, of the judges of the several superior
courts of this State, in any court, whether civil or criminal, or in equity;
during its progress, or in his charge to the jury, to express or intimate his
opinion, as to what has or has not been proved, or as to the guilt of the
accused.

133. Sec. II. Should any judge of said superior courts violate the
provisions of the first section of this act, it shall be held by the supreme
court for correction of errors in this State, to be reversed, and a new trial
granted in the court below, with such directions as they may lawfully
make.

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

AN ACT to provide for the Election of all the Judges of the Superior
Courts, by the free white people of the State of Georgia, and for other
purposes therein named.—Approved Jan. 12, 1852.

134. Sec. I. Be it enacted, That from and immediately after the pas-
sage of this act, it shall not be lawful for the General-Assembly of this
State, or either branch thereof, by joint-ballot or otherwise, to elect or
JUDICIARY.—JUDGE OF THE SUPERIOR COURT.

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appoint, the whole or any portion of the judges of the superior courts of said State.

135. Sec. II. That in each judicial circuit or district in this State, an election shall be had and held for one judge of the superior courts of said district or circuit, in the order following, on the day and time herein-after specified; that is to say, for the Eastern, Middle, Northern, Western, Ocmulgee, Southern, Flint, Chattahoochee and Cherokee circuits or districts. Which said election for a judge of the superior courts, in and for the aforesaid circuits or districts, shall be had and held on the first Monday in October, in the year of our Lord eighteen hundred and fifty-three, and on the first Monday in October in every fourth year thereafter. And also, for the Coweta, South-Western, Macon and Blue-Ridge circuits or districts, there shall be had and held, in and for said circuits or districts, an election for a judge of the superior courts thereof, on the first Monday in October, in the year of our Lord one thousand eight hundred and fifty-five, and on the first Monday in October in every fourth year thereafter. Which said elections shall be opened, held, managed and conducted and closed, in the same manner and under the same rules and regulations, as are now or hereafter, may be prescribed by law for holding elections for members of the General-Assembly of this State. And all free white male persons, qualified by law to vote for members of the General-Assembly, shall be and they are hereby declared to be entitled and qualified to vote for one judge of the superior courts, in their several and respective judicial circuits or districts. But no one not a resident-citizen of the district or circuit for at least six months immediately preceding such election, shall be entitled to vote. And any person entitled to vote in one county may vote in any county, in such district.

136. Sec. III. That the voters at said elections shall designate on each ticket or ballot the name of the person voted for as judge of each circuit or district. And the person having the highest number of legal and qualified votes shall be declared, as herein-after provided, to be elected judge of said circuit or district: Provided, he shall have the qualifications herein-after prescribed.

137. Sec. IV. That the managers and superintendents of said elections, at the court-house and the several election-precincts in each county in said circuits or districts, or any one or more of them from each precinct, on the day after the election, shall meet together at the court-house of said county, and then and there count, compare, consolidate, add together, the returns to them produced by the managers or superintendents of the precinct-elections, and return and certify the same and the result thereof, within twenty days thereafter, to the governor of this State for the time being, under the same rules and regulations as are now or hereafter may be prescribed by law, in relation to the election of members of the General Assembly of this State, except as the same may be altered by the provisions of this act. And thereupon, it shall be the duty of the governor for the time being, within five days after the expiration of the aforesaid twenty days, together with the secretary of State, to compare, consolidate, count up, and add together, the legal votes cast or polled for each candidate from each county in said circuit or district, or from such as may have made returns, as herein-after required. And immediately thereafter, the governor shall issue his proclamation declaring the person having the highest number of legal votes polled in said circuit or district, and qualified as herein-after provided for, to be duly elected judge of the superior courts thereof; notifying and requiring said person so elected to appear before two or more justices of the inferior court of
the county in which he then resides, who are hereby authorized and required to administer to him, in writing, the usual oath of office, which said oath the clerk of the inferior court of said county shall enter and record on the minutes of said court, and transmit, under his hand and seal of office, if there be one, and if not, under his own seal, a certified copy thereof, to the governor, as soon as may be; and thereupon the governor shall cause the usual commission to be made out, issued and transmitted to the person so elected judge of the superior courts as aforesaid.

138. Sec. VI. That no person shall be qualified for and eligible to the office of judge of the superior courts of this State who shall not have been a resident citizen of this State for ten years immediately preceding his election, and who shall not have been a resident inhabitant of the circuit or district in which he may be elected for at least one year next before his election, and who shall not have arrived at the age of thirty years, and who shall not have been, duly admitted and licensed to plead and practise in the several courts of law and equity in this State (except the supreme court) five years, at least, prior to his election.

139. Sec. VII. That each and all persons who now, or may hereafter at any time, hold a commission as judge of the superior courts of this State, shall continue to hold the same and perform the duties of said office until the expiration of the time for which he or they have been elected and commissioned, and until their successors shall be elected, qualified, and commissioned, in manner and form as herein-before provided for: Provided, that nothing in this act shall be so construed as to prohibit the judge of one judicial district from presiding and holding courts in any of the districts or circuits of this State, under such circumstances as have heretofore been customary and allowed by law.

140. Sec. VIII. That in case of vacancies by death, resignation, or otherwise, the governor shall appoint until a new election is ordered and had, and the person elected is commissioned.

Sec. IX. That all laws and parts of laws militating against this act, and the true intent and meaning thereof, be and the same are hereby repealed.

As Act to amend an act entitled "an act to provide for the Election of all the Judges of the Superior Courts, by the free white people of the State of Georgia, and for other purposes therein named," approved January 12th, 1852.—Approved Feb. 18, 1854.

141. Sec. I. Be it enacted, That from and after the passage of this act, the fifth section of said act is hereby repealed, and in lieu thereof, the following shall be adopted and enacted:—That whenever a vacancy occurs, or it shall so happen that there shall not have been any election or choice of a judge of the superior courts, in either or all of said districts or circuits, from any cause whatever, that then and in all such cases, it shall be the duty of the governor, to order a special election for a judge or judges, as the case may be, to fill such vacancy or vacancies; which said special election shall be held in all cases, on the next succeeding day for a general election in Georgia, whether on the first Monday in January, or the first Monday in October next thereafter, and at no other time: Provided, that in all cases the governor’s proclamation shall be published for at least thirty days, next preceding said election days. And said judge or judges when so elected, shall hold their offices for the full term of four years, and shall be commissioned by the governor accordingly.

142. Sec. II. That when any vacancy occurs in the office of judge of the superior court, of any of the circuits of this State, by death, resignation or
otherwise, and the unexpired term for which the vacancy occurred, does not exceed the period of twelve months, the person appointed to fill said vacancy by his excellency the governor, shall hold said office for the unexpired term, and no election shall be ordered to fill said vacancy.

Sec. III. That all laws and parts of laws militating against this act, be and are hereby repealed.

An Act to fix the time of holding Elections for Judges of the Superior Courts, Attorney-General and Solicitors-General.—Approved March 1, 1856.

143. Sec. I. Be it enacted, That from and after the passage of this act, the regular elections of judges of the superior courts, attorney-general and solicitors general, shall be held on the first Monday in January.

Sec. II. [Repeals conflicting laws.]

An Act to regulate the publication of Rules, Writs, Bills, Orders and Precepts of Court, relative to cases in Equity; to fix the cost thereof, and to amend certain defects in the Process of Writs, and to prescribe the time of filing Declarations in Attachments.—Approved Dec. 20, 1838.

144. Sec. II. When any process or writ shall bear test in the name of any judge of the superior courts of this State, who shall have died before the issuing the same, said writ or process shall not abate therefor, but the same shall at any time, be amended on motion, without delay or costs.

Sec. IV. [Repealing section.]

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

145. Sec. I. Be it enacted, That from and after the passage of this act, the judges of the superior court in this State shall, severally, have the power to appoint temporarily, a clerk or sheriff in any county, in which there may be a vacancy in either of said offices, at the time provided by law for the holding of the said courts.

146. Sec. II. The sheriff so appointed shall only hold his office during the term of the court at which he was appointed. And the Clerk so appointed, by virtue of the authority aforesaid, shall hold his office during the term, and for four days thereafter.

147. Sec. LIX. [The first part of this section, directing the annual Convention of the Judges of the Superior Courts, repealed in part and re-enacted in 1821.] And the said judges, or any of them, shall have power to perpetuate testimony, on such terms and in such manner as is usually practiced in courts of equity.

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

148. Sec. I. From and after the passage of this act, it shall be the duty of the judges of the superior courts of this State, at the first sitting of the superior court, in any county in this State, after a sheriff shall have been elected and qualified for such county, to examine the official bond of such sheriff; and if the bond has been taken in conformity to the law, to cause the bond to be entered on the minutes of the superior court. And in case the bond has not been taken in conformity to law, it shall be the duty of the sheriff to give another bond in conformity to the law, which bond the judge is hereby authorized and empowered to take, and when so taken, shall be entered on the minutes of the superior court.

Note.—By special enactments, the Judges of the Superior Courts of the respective Circuits, are required to give in special charge, several Acts of the Legislature, on different
subjects, for which see Cobb's Penal Code, pp. 208, 9, 10, 11 and 12, and title Education, of this work. In addition to the above Acts the Judges are required, "at the first term of the Superior Court of each County, in each year, to give the Act, relating to the Poor-School Fund, in special charge, to the Grand Jury"—see title Education; and likewise, the Act "to provide for the Education of the Poor," ib.

The Judges are also required, "at the first sitting of the Superior Court, in any County in this State, after a Sheriff shall have been elected and qualified for such County, to examine the Official Bond of such Sheriff.""

149. 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 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 every hundred words of recording 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 inferior courts, as the case may be, prior to the adjournment from day to day.

150. 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 being 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, decrees, judgments and other proceedings 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 $3,000; conditioned for the faithful discharge of the duties required of them. And the said clerks shall, in virtue of their offices, be justices of the peace, so far as to administer all oaths appertaining to the business of their office.

151. 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 the same person may be clerk of the superior and inferior courts of the same county: Provided, that nothing herein contained shall extend to prevent any officer of the court from prosecuting or defending any suit to which he is a party.

Clerk's Bond.

STATE OF GEORGIA, } We, William H. Miller, as principal, and
Houston County. } Samuel Felder and William H. Talton, as securities, acknowledge ourselves held and bound to Joseph E. Brown, Governor of said State for the time being, and his successors in office, in the sum of three thousand dollars, subject to the following condition—

The condition of the above obligation is such—whereas, the above bound William H. Miller, was, on the first day of January, eighteen hundred and fifty-nine, elected Clerk of the Superior Court of the
County of Houston, in said State: now should said William H. Miller, well and truly do and perform, all and singular, the duties required of him by law, as Clerk as aforesaid, according to the trust reposed in him, then the above obligation to be void; otherwise, of force. This January 10, 1859.

Before us,

John Ragin, J. I. C.  William H. Miller, prin'. [L. S.]
John D. Winn, J. I. C.  Samuel Felder, sec'y. [L. S.]
Charles Anderson, J. I. C.  William H. Talton, sec'y. [L. S.]

Deputy-Clerk's Bond.

STATE OF GEORGIA, }  We, Thomas Killen, as principal, and Hugh
Houston County. }  Dennard and Drury W. Taylor, as securities,
acknowledge ourselves held and bound to William H. Miller, Clerk of
the Superior Court of the County aforesaid, in the sum of one thousand
dollars, subject to the following condition—

The condition of the above obligation is such—whereas, the above
bound Thomas Killen, has this day, by William H. Miller, Clerk of the
Superior Court of the County aforesaid, been appointed Deputy of
the said William H. Miller; now, should the said Thomas Killen well
and truly do and perform, all and singular, the duties required of him
by law, as the Deputy-Clerk of the Superior Court of said County,
according to the trust reposed in him, then the above obligation to be
void; otherwise of force. This January 10, 1859.

Before us,

John Ragin, J. I. C.  Thomas Killen, prin'. [L. S.]
John D. Winn, J. I. C.  Hugh Dennard, sec'y. [L. S.]
Charles Anderson, J. I. C.  Drury W. Taylor, sec'y. [L. S.]

Note.—The form of Bond given by the Clerk of the Inferior Court is the same as
that given by the Clerk of the Superior Court.—mutatis mutandis.

An Act to compel the Clerks to keep their offices at the Court-House of their
respective Counties, or within one mile thereof.—Approved Dec. 7, 1807.

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

152. Sec. I. Be it enacted, That from and after the first day of June next,
it shall be the duty of the clerks of the superior and inferior courts, and the
clerks of the court of ordinary, to keep their offices, books and papers, at the
court-house of their respective counties, or within one mile thereof, except the
counties of Glynn, Effingham, Bryan and Bulloch; and except the county of
Wilkinson, until the public buildings be made permanent.

153. Sec. II. Each and every of the said clerks, except as before excepted,
shall forfeit and pay the sum of $30 for every month they, or either of them,
shall fail to comply with the requisitions of this act, to be recovered in the
superior court, on motion of the attorney or solicitor-general, by attachment
as for contempt, and to be considered as a part of the county funds.
An Act to allow Clerks to appoint Deputies.—Approved Dec. 19, 1817.

Whereas, considerable inconvenience arises to the good citizens of this State, in consequence of the non-appointment of deputies by the clerks of the superior, inferior and corporation courts, and the courts of ordinary of this State; for remedy whereof—

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

An Act to legalize the acts of Deputy-Clerks of the Superior and Inferior Courts and Courts of Ordinary, under the age of twenty-one years.—

Approved Dec. 20, 1824.

155. From and immediately after the passage of this act, all the acts heretofore done by the deputy clerks of the superior, inferior and courts of ordinary, in this State, under the age of twenty-one years, be and the same are hereby made as legal and valid as if such deputy clerks, at the date of such acts, had been twenty-one years of age: Provided, that nothing herein contained shall be construed to exempt the principal clerks from any liability their deputies may have incurred.

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

156. Sec. I. From and after the passage of this act, it shall be the duty of the clerks of the inferior courts of the several counties of this State, to record in a book to be kept for that purpose, all constables' bonds that may hereafter be returned into their and each of their respective offices by the magistrates before whom said bonds are executed, within twenty days after the same are so returned.

157. Sec. II. In all causes which may hereafter be instituted in any of the courts of law or equity in this State, against the principal and securities, or either of them, on any official bond given by any constable in this State, it shall be lawful for the said courts to receive as evidence of the fact of the due execution of such bond, a certified copy thereof, made by the proper officer, when [where] such bond is of file or recorded; which copy shall be sufficient testimony in the cause, unless denied on oath.

Sec. III. [Repealing section.]

An Act to compel the Clerks of the Superior and Inferior Courts, and the Courts of Ordinary, of the several counties of this State, to buy a Seal of Office for each of said Courts.—Approved Jan. 12, 1852.

158. Sec. I. Be it enacted, That from and after the passage of this act, it shall be the duty of the clerks of the superior and inferior courts and courts of ordinary of the several counties of this State, to buy a good and substantial Seal of Office, where there is not one already provided, for each of said offices; with the name of the county and court inscribed thereon. And said Seals shall be paid for by the several county treasurers, out of any funds in their hands belonging to the county. And receipts of said clerks for the
amount paid, shall serve as a proper voucher for said treasurers, in any settle-
ment thereafter had with the county.

159. Sec. II. That if any of the clerks of the superior and inferior courts
and courts of ordinary of the several counties of this State, shall neglect or
refuse to buy a Seal of Office as required by the first section of this act,
within six months after the passage of this act, said clerks or ordinary so
failing or refusing shall be guilty of a misdemeanor, and on indictment and
conviction in the superior court, shall be fined the sum of fifty dollars, one-half
to the prosecutor and the other to county purposes.

An Act to legalize the acts of certain Deputy-Clerks of the Superior Courts,
Inferior Courts, and Courts of Ordinary of this State.—Approved Jan.
12, 1852.

Whereas, By the act of December 19th, 1817, the several clerks of the
superior, inferior and corporation courts, and courts of ordinary of this
State, are authorized to appoint deputies.

And whereas, it has been decided by some of the superior courts of this
State, that all declarations, processes and other official papers, and instru-
ments, signed by such deputies, are illegal and of no effect, for remedy
whereof—

160. Sec. I. Be it enacted, That from and after the passage of this
act, all writs, declarations, processes and other official instruments that
have heretofore or may hereafter, be signed by any such deputy-clerk of
the superior, inferior or corporation court, or court of ordinary, shall be
as legal and binding to all intents and purposes, as if the same had been
signed by such principal clerk. Any law, usage or custom to the contrary
notwithstanding.—[See 167.]

An Act to alter and amend the 6th sec. &c. and to prescribe the mode
of issuing Scire Facias in certain cases therein provided for.—Approved
Dec. 11, 1841.

161. Sec. III. All scire facias hereafter to be issued for the purpose of
making parties to any suit at law or equity, pending in the superior or in-
ferior courts of this State, shall be issued by the clerk of said court; in
which it shall be sufficient for said clerk to state the names of the parties,
the term of the court to which said case was made returnable, and the
name of the suit, or action; requiring the party to appear and show cause
why he should not be made party to said cause; without setting forth the
substance of the bill or declaration, or the proceedings had thereon, as here-
tofore practised.

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

Scire Facias to make parties.

STATE OF GEORGIA, To all and singular the Sheriffs of the State of
Houston County.

JOHN DOE

vs.

RICHARD DOE.

Whereas, John Doe, Plaintiff in the above case died, pending said
action of Assumpsit, and his death has been suggested of record. And
whereas, Charles Smith, has been duly appointed Administrator of the
Estate of said John Doe. Therefore, you are hereby commanded to

How Scire Fa-
cias to make
party may be
formed.
notify said Charles Smith to be and appear at the next term of said Court, to be holden on the fourth Monday in October next, to show cause why he should not be made party Defendant, in said action of Assumpsit, and said action proceed.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 1, 1859.

William H. Miller, Clerk.

An Act to define the duties of the Clerks of the Superior and Inferior Courts of this State, and Sheriffs.—Approved Dec. 15, 1810.

Whereas, a practice has prevailed in the superior and inferior courts of this State, for judgments to be kept open, notwithstanding the sheriff may have returned the execution or executions bottomed on such judgment's satisfied. And whereas, great evil might grow out of such practice; for remedy whereof—

162. Sec. I. Be it enacted, That from and after the first day of February next, it shall be the duty of such clerks, immediately after the return of such sheriff of such execution or executions, as the case may be, to enter such satisfaction on such judgment, either in whole or in part, as per sheriff's return.

163. Sec. II. It shall be the duty of such clerks to keep a docket-book for the special purpose of entering the names and stating the cases of parties, plaintiff or plaintiffs and defendant or defendants, and enter such satisfaction as aforesaid.

164. Sec. III. The respective clerks of the superior and inferior courts of this State, shall keep regular subpæna-dockets. And the said clerks of the superior courts shall also keep separate docket for all criminal cases, which shall be entered in their regular order.

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

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

An Act to legalize and make valid any Process heretofore signed by Deputy-Clerks, or which may hereafter be signed by them.—Approved Jan. 22, 1852.

167. Sec. I. Be it enacted, That all processes which may have hitherto issued, or may hereafter issue from the superior and inferior courts of this State, signed by the deputy-clerk, either in his own name or that of the clerk, shall not be dismissed, but the said process shall be as sufficient in law as though the same had been signed by the clerk himself. Any law to the contrary notwithstanding.
SHERIFF AND DEPUTY.

168. Sec. XLVI. The sheriffs of the several counties shall attend the superior and inferior courts in the respective counties when sitting, and by themselves or deputies, execute 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 inferior 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 sheriff shall enter upon the duty of his appointment, and being commissioned by the governor, he shall be bound for the faithful performance of his duty, by himself and his deputies, before any one of the said judges, to the Governor of the State for the time being, and to his successors in office, jointly and severally, with two good and sufficient securities, 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 $30,000; and the said bond shall remain in the office of the clerk of the superior court of such county, and may be sued for by order of the said court, [see 201.] for the satisfaction of the public, or persons aggrieved by the misconduct of the sheriff or his deputy. And the Oath of Office. said sheriff shall take and subscribe the following oath, before one of the judges of the superior or justices of the inferior courts, 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. 169. 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 meantime, 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 shall have the like remedy for the misconduct, or misfeasance, or default in office, of such deputy or deputies, during such intervals, as he would be entitled to if the sheriff had continued in life, and in the execution of his office, until his successor was appointed and sworn. 170. 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 processes as shall remain in his hands unexecuted, who shall duly execute and return the same. And in case any sheriff shall neglect or refuse to turn over such process, in manner aforesaid, every such sheriff so neglecting or refusing, shall be liable to make such satisfaction, 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 appointment, 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 predecessor sheriff's duty. May command posse. Must give Bond and Security. Deputy must take Oath. Where Sheriff dies Deputy acts. Ex'r or Adm'r of dec. Sheriff may have remedy against Deputy. Sheriff must turn over to his successor all Office-Papers and unfinished business; successor must finish the same. Jail and Prisoners must be turned over.
JUDICIARY.—SHERIFF AND DEPUTY.

Incoming Sheriff must finish the business of his predecessor.

Sheriff's powers and liabilities.

Shall not practice Law.

Subject to Attachment or Action on the Case, for failure to perform his duty.

Liability for mal-practice in office.

Liability in certain cases.

in office, in like manner as such sheriff could have done, had he continued therein; and shall make titles to the purchasers for all the property sold under execution and not conveyed by his predecessor.

171. Sec. XLIX. The sheriffs of the several counties in this State, shall have like powers and authorities, and they and their under-sheriffs and jailors, constables and other officers 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 their respective offices, in the same manner as they have heretofore been liable by laws 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.

172. Sec. LI. 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 injured 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.

173. Sec. LII. If any sheriff or his deputy or under-sheriffs shall be guilty of extortion or other mal-practice 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.

174. Sec. LIII. 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 up all moneys received on such executions on his being required by the court so to do, he shall be liable to an action as for contempt, and may be fined, imprisoned or removed from office, in the manner prescribed by the constitution.

Sheriff's Bond.

STATE OF GEORGIA, } We, Madison Marshall, as principal, and William
Houston County. } H. Talton and Hugh Dunning, as securities. all of
said State and County, acknowledge ourselves held and bound to his
Excellency Joseph E. Brown, Governor of said State, for the time
being, and his successors in office, in the sum of twenty thousand
dollars, subject to the following conditions—

The conditions of the above obligation are as follows—whereas, said
Madison Marshall has been elected Sheriff of said County: now, should
the said Madison Marshall well and truly do and perform his duties as
Sheriff of said County, by himself, Jailer and Deputy. And faithfully
execute all Writs, Warrants, Preejects and Processes directed to him,
as Sheriff, as aforesaid, for and during his term of office, and true
returns make. And in all things, well and truly, without malice or
partiality, perform the duties of said Office of Sheriff, by himself,
Jailer and Deputy, during his term of Office, and take only the fees prescribed and allowed by law. And faithfully perform, all and singular, the duties required of him as Sheriff as aforesaid, then the above obligation to be void; otherwise of force. This January 10, 1859.

Approved—


\textbf{Deputy-Sheriff’s Bond.}

\textit{State of Georgia.} We, Marcus Kunze, as principal, and William \textit{Houston County.} H. Miller and \textit{John S. Jobson}, as securities, acknowledge ourselves held and bound to \textit{Madison Marshall}, Sheriff of said County, in the sum of ten thousand dollars, subject to the following conditions—

The conditions of the above obligation are as follows—Whereas, said Marcus Kunze has this day, by \textit{Madison Marshall}, Sheriff of said County, been appointed Deputy to him, the said Sheriff: now, should said Marcus Kunze well and truly do and perform faithfully his duties as Deputy Sheriff of said County. And faithfully execute all Writs, Warrants, Precepts and Processes, directed to the Sheriff of said County, and which may come into his hands, for and during the time of his continuance in Office, and true returns make. And in all things well and truly, without malice or partiality, perform the duties required of him as Deputy-Sheriff, as aforesaid, and take only the fees prescribed and allowed by law. And faithfully perform, all and singular, the duties required of him as Deputy-Sheriff, as aforesaid, then the above obligation to be void; otherwise, of force. This January 10, 1859.

Approved—

James Mack, J. P. Marcus Kunze, priv'l. [L. S.]
W. H. Miller, sec'ty. [L. S.]
J. S. Jobson, sec'ty. [L. S.]

\textbf{Deputy-Sheriff’s Oath.}

\textit{State of Georgia.} I, Marcus Kunze, Deputy-Sheriff of said \textit{Houston County.} County, do solemnly swear that I will faithfully execute all Writs, Warrants, Precepts and Processes which may come into my hands, directed to the Sheriff of said County, and true returns make; and in all things well and truly, and without malice or partiality, perform the duties of Deputy-Sheriff of said County, during my continuance in Office; and take only my lawful fees—so help me God.

Sworn to and subscribed, before me, this January 10, 1859.\textit{James Mack, J. P.}

\textit{Note.—By the Act of Dec. 11, 1841, Deputy-Sheriffs may be ruled in the same way that Sheriffs may be ruled; but this does not relieve the Sheriff from responsibility.}

The same Act provides that when the Sheriff, or his Deputy, is a party to a Rule, or interested therein, and there be no Coroner, or other lawful officer of said County to execute the same, it shall be the duty of the Court to appoint, \textit{pro tempore}, a special officer, for the purposes of executing the Rule, etc.
An Act to regulate the appointment of Jailers, and to alter and explain another act.—Approved Dec. 16, 1811.

175. Sec. I. In future all sheriffs, on appointing a keeper of the jail, to [shall] require sufficient security of him or them. And such person appointed, shall before he enters on the duties of his or their office, take and subscribe the following oath, before some one of the justices of the inferior court of said county, to wit: “I, A B, do solemnly swear, (or affirm, as the case may be,) that I will well and truly do and perform, all and singular, the duties of jailer for the county of ____. And that I will humanely treat all criminals who may be brought to jail, of which I am the keeper; and not suffer them to escape by any negligence or inattention of mine—so help me God.”

Jailer’s Bond.

STATE OF GEORGIA, \ We, \ \ and Charles Smith, as securities, acknowledge ourselves held and bound to Madison Marshall, Sheriff of said County, in the sum of ten thousand dollars, subject to the following conditions—The conditions of the above obligation are as follows—whereas, the above-named John Doe, has this day, by the Sheriff aforesaid, been appointed Jailer of said County; now, should said John Doe, well and truly, do and perform, all and singular the duties required of him as Jailer of the County aforesaid; and humanely treat and securely keep, all Criminals and other persons, brought to the Jail of said County, by lawful warrant and authority, and not suffer them to escape by negligence or inattention, then the above obligation to be void; otherwise, of force. This January 10, 1859.

Approved—

James Mack, J. P.

John Doe, principal, [L. S.]

Richard Roe, security, [L. S.]

Charles Smith, security. [L. S.]

An Act to alter and amend the ninth section of the Judiciary Act of 1799, and the first section of an act relative to Executions, passed Dec. 14, 1811.—Approved Dec. 22, 1840.

176. Sec. IV. When said process or execution shall be served or levied by a sheriff out of his own county, that the sheriff, so serving and returning the same, shall receive in addition to the fees established by law, for such service or levy, the sum of two dollars.

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

An Act to make valid the Bonds taken by the Sheriffs of this State, and their Deputies, Coroners and Constables, from Defendants in Execution, for the delivery of property levied on by them.—Approved Dec. 21, 1829.

177. From and after the passing of this act, all bonds taken by the sheriffs of this State or their deputies, or coroners, or constables, from defendants in execution, for the delivery of property (on the day of sale, or at any other time,) which they may have levied on by virtue of any fi fiu. or other legal process, from any court, be and the same are hereby declared to be good and valid in law, and recoverable in any court in this State having jurisdiction thereof.—[See 199.]
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178. Sec. II. The bonds taken in conformity with the first section of this act, shall in no case prejudice or affect the rights of plaintiffs in execution, but shall relate to and have effect alone between the sheriffs, their deputies, the coroners and the constables, and defendants by whom given. And the sheriff shall in [no] case excuse himself for not having made the money on any execution by having taken such bond, but shall be liable to be ruled as now prescribed by law.

An Act to prohibit Sheriffs and their Deputies from becoming directly or indirectly, Purchasers of property at their own sales; to vacate all Titles taken or held by them, for property so purchased, and to make penal the violation of this act; and to regulate their charges in certain cases.—Approved Feb. 22, 1850.

179. Sec. I. Be it enacted, That from and after the passage of this act, no sheriff or deputy-sheriff shall be permitted to purchase any property whatever, sold by himself; nor any sheriff, property sold by his deputy; nor any deputy-sheriff, property sold by his principal, or other deputy of said principal; either directly upon his own bid, or indirectly, upon the bid of any other person. And that every deed, and all deeds, intended to vest in any sheriff or deputy, a title to property purchased at such sales in violation of this act, whether made by such sheriff or deputy, or by any purchaser at such sale, shall be null and void.

180. Sec. II. Any sheriff or deputy-sheriff who shall violate the provisions of the first section of this act, shall be liable to be indicted as for a misdemeanor, and upon conviction shall be subject to fine, in the discretion of the court, or imprisonment in the common jail of the county for a term not exceeding six months, or both.

181. Sec. III. Whenever a sheriff or his deputy shall levy upon any negro property, he shall not be allowed to charge in any case, for feeding and keeping, or any other necessaries, furnished such negro or negroes, in such cases where the services of such negro so levied on, have been applied to the use of said sheriff or his deputy, prior to the sale and pending the levy.

Sec. IV. All laws or parts of laws militating against this act, are hereby repealed.

An Act to authorize Sheriffs to perform the duties of their Office, in adjoining Counties, in certain cases herein defined.—Approved Dec. 7, 1812.

182. In all cases which require the official acts of a sheriff, wherein he is or may be a party in the case, and no coroner can be obtained in the county, to perform and execute the office of sheriff, that then and in that case, it shall and may be lawful for any sheriff in an adjoining county, to do and perform all manner of official acts that a coroner is authorized to do and perform in cases where the sheriff is a party interested.

An Act requiring Judges to grant Rules Absolute against Sheriffs, in certain cases.—Approved Dec. 11, 1841.

Whereas, Sheriffs in this State frequently absent themselves from their courts for the purpose of preventing rules being taken against them, for failure to raise moneys on executions. And whereas, injury frequently accrues to plaintiffs in execution; for remedy whereof—

183. Sec. I. Be it enacted, That whenever a sheriff of any county in this State, absenting himself from his court, that the presiding judge or judges, in all such instances, when required by plaintiffs in executions, or Sheriff and his Deputy not to purchase at their own sales.

Deeds declared null and void.

Guilty of misdemeanor and may be punished.

Slave levied on by sheriff, and employed by him, feeding not to pay for.

Sheriff interested and no coroner, sheriff of adjoining county may act.

Absenting sheriff may be ruled.
their attorney, shall grant rules absolute against said sheriff, unless it is proven at said term of the court, that the sheriff from sickness, is not able to attend said court. Any law or custom, to the contrary

*An Act to relieve Criminals and other persons confined in the Jails of this State.—Approved Dec. 19, 1818.*

Whenever the sheriff of any county shall have incurred any expense in the performance of his duty as above prescribed, he shall lay before the inferior court of the county of which he is sheriff, an account of the same; who shall pay the same out of any funds belonging to said county, in preference of all other claims upon said fund whatsoever.

*An Act to compel Sheriffs and Coroners to deliver possession of Real Estate, sold by them under Executions, to the Purchaser, his or her agent, or attorney.—Approved Dec. 25, 1823.*

**Chapter 239.** The said sheriff, or sheriff’s deputy, and the said sheriff and coroner are hereby empowered to sell any real estate, not possessed and charged against them as aforesaid, by none other than the party or the party’s heirs or assigns, for the payment of said sum of money, and of all further expenses and costs. and the said sheriff and coroner may sell any real estate, not possessed and charged against them as aforesaid, by none other than the party or the party’s heirs or assigns, for the payment of said sum of money, and of all further expenses and costs, whether such sale be for the time being or subsequently to the date of the order of the court. And the sheriff, or sheriff’s deputy, and the said sheriff and coroner may sell any real estate, not possessed and charged against them as aforesaid, by none other than the party or the party’s heirs or assigns, for the payment of said sum of money, and of all further expenses and costs, whether such sale be for the time being or subsequently to the date of the order of the court.
person were in possession at the term [time] of the rendition of the judgment; or if such person has acquired such possession under the judgment of a court of competent jurisdiction, or claim under the person or persons acquiring such right, by the judgment of such court.

An Act pointing out the duty of Sheriffs, in selling Lands under Execution.
—Approved Dec. 22, 1808.

189. Sec. I. It shall hereafter be the duty of the sheriffs of the several counties in this State, when they levy any execution on land, to leave a written notice of the said levy with the owner, if in the county, or tenant in possession, if any; or transmit the same to him, her or them, in five days after such levy.

190. Sec. II. It shall not hereafter be lawful for any sheriff within this State, to levy upon or sell any land which lies out of the county of which he is sheriff. Any thing in any law, to the contrary notwithstanding.—[See 193.]

Sheriff's Notice of Levy.

STATE OF GEORGIA, ) To Richard Roe.—You are hereby notified

Houston County. ) and informed, that I have, this day levied an Execution, issued from the Superior Court of said County, in favor of John Doe against yourself, on lot of land number forty-nine, in the tenth district of said County, as your property. Said land will be advertised for sale on the first Tuesday in July next. This May 1, 1859.

MADISON MARSHALL, Sheriff.

An Act to alter and explain the first section of the Act of December 22, 1808.
—Approved Dec. 16, 1811.

191. Sec. II. The first section of the before-recited act shall not be so construed as to authorize any judge of the superior courts to order writs of possession to issue against a third person, residing within the limits of any such survey or tract of land so offered for sale: Provided also, that such person shall not be known in the suit on which such execution is founded, nor have been put in possession by or claimed under or by virtue of any conveyance from the defendant in such suit.

An Act to prevent Sheriffs and other officers from levying on and selling Growing Crops, except in certain cases.—Approved Dec. 29, 1836.

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

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

An Act to enable Sheriffs or Coroners to sell tracts of land divided by a County-line.—Approved Dec. 25, 1847.

193. Sec. I. Be it enacted, That from and after the passage of this act, Land divided
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by County-line may be sold.

where judgment shall be obtained against any debtor owning a tract or tracts of land, divided by a county-line or county-lines, it shall and may be lawful for the sheriff or coroner of the county to levy on and sell the whole of said tract or tracts of land, notwithstanding part of said tract or tracts of land may lie in counties of which he is not sheriff or coroner.

194. Sec. II. Where any judgment-debtor shall own any tract or tracts of land, divided by a county-line or county-lines, and no part of such lands shall lie in the county [of his residence], it shall and may be lawful for the sheriff or coroner of either county in which part of said tract or tracts of land may lie, to levy on and sell the whole of said tract or tracts of land.

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

An Act to alter and amend an act passed 22d Dec., 1840, entitled "an act to alter and amend the 9th section of the Judiciary act of 1799, and the first section of an act relative to Executions, passed Dec. 14, 1811."

And to provide for the enforcement of Judgment against land sold and Bond for Titles given.—Approved Dec. 29, 1847.

195. Sec. 1. Be it enacted, That the second section of the act, of which this is amendatory, be amended so as to read as follows; "Sec. 2. And be it further enacted, That all executions, orders, decrees, attachments for contempt, and all final process hereafter issued by the clerks of the superior and inferior courts, in favor of or against any sheriff of this State, shall be directed to the coroner of the county in which said sheriff may reside, and to all and singular the sheriffs of the State, except the sheriff of the county in which the interested sheriff may reside, which may be levied, served and returned by the said coroner or other sheriff, at the option of the plaintiff or party seeking to have the action of said officer or officers."

196. Sec. II. The third section of the act of which this is amendatory, shall be so amended as hereafter to read and be as follows: "Sec. III. And be it further enacted, That when a sheriff shall levy on property by virtue of any execution, directed and required by the second section of this act, as herein-before amended, said property shall be sold in the county in which the levy may be made. And that whenever any decree, order, ca. sa. attachment for contempt or final process, directed as required by the second section of this act, as now amended, shall be placed in the hands of any sheriff, and under and by virtue of said process, it shall become the duty, under the laws of this State, of said sheriff, to imprison any defendant or other delinquent, it shall be lawful for said sheriff to arrest the delinquent wherever found; and it shall be his duty to imprison him or her, in the county where the arrest was made, or in the county where the arresting sheriff may reside, at the option of the plaintiff or other person so requiring the services of said sheriff."

197. Sec. III. When any judgment has been or shall be rendered, in any of the courts of this State, upon any note or other evidence of debt, given for the purchase of land, where titles have not been made, but bond for titles given, it shall and may be lawful for the obligor in said bond, to make and file, and have recorded in the clerk's office of the superior court of the county, a good and sufficient deed of conveyance to the defendant for said land, and thereupon the same may be levied on and sold under said judgment, as in other cases: Provided, that the said judgment shall take lien upon the land prior to any other judgment or inmembrance against the defendant.

An Act for the relief of Sheriffs in certain cases.—Approved Dec. 22, 1829.

Whereas, it is frequently oppressive upon sheriffs to serve and return
all writs and processes within the time prescribed by law; for remedy whereof—

198. *Be it enacted*, That from and immediately after the passing of this act, it shall not be necessary, as heretofore, for the sheriffs of this State, to serve all writs and processes at common law twenty days before the sitting of the court to which the same may be made returnable, but the same may be served and returned seventeen days before the sitting of the court: Provided nevertheless, that all writs and processes shall be copied and issued, as heretofore, twenty days before the sitting of the court to which the same may be made returnable. Any law, usage or custom to the contrary notwithstanding.—[See 206.]

An Act to compel Coroners, Sheriffs and Constables to receive Securities on certain occasions therein expressed.—Approved Dec. 16, 1811.

199. Sec. I. In all cases where a levy is made on property which is claimed by a third person, and good and sufficient security is tendered by the party claiming the same, it shall be the duty of such sheriff, constable or coroner, to take security for treble the amount of the debt on which such execution is founded, for delivery of the property so levied on, at the time of sale, provided the property so levied on should be found subject to such execution. Then and in that case it shall be the duty of the sheriff, coroner or constable, to leave the same in the possession of such claimant; and in case the said claimant or security shall fail to deliver the property at the time and place of sale, agreeably to such bond, it shall be the duty of the officer taking the same, to transfer such bond to the plaintiff in execution; and said bond shall be recoverable in any court of law or equity in this State, having cognizance thereof.

An Act to fix the Fees of Sheriffs, Constables and Coroners in certain cases therein specified, and to provide for taxing the same.—Approved Jan. 7, 1852.

200. Sec. I. *Be it enacted*, That from and after the passage of this act, in all cases where the plaintiff or plaintiffs in attachment shall require any sheriff, or other levying officer of this State, to follow with any attachment any property which may be run out of the county in which such attachment may issue, such sheriff, or other levying officer, shall be allowed for such service the sum of five cents per mile in going and returning, to be taxed and paid as other costs, now provided by law.

Sec. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

An Act to alter, change and amend the forty-sixth section of an act to amend an act entitled an act to revise and amend the Judiciary system of this State, approved February 16th, 1799, so far as to dispense with an order of Court, before bringing suits on Sheriff's Bonds.—Approved Feb. 7, 1854.

201. Sec. I. *Be it enacted*, That from and after the passage of this act, the forty-sixth section of an act to amend an act, entitled an act to revise and amend the judiciary system of this State, approved February the 16th, 1799, be and the same is hereby altered, changed and amended, so far as to dispense with an order of court before bringing suits on sheriff's bonds, and that hereafter such order of court shall in no case be required.
An Act to alter and amend the thirty-third section of an act, entitled "An act to revise and amend the Judiciary System of this State," passed 16th February, 1799, so far as relates to the hours of Sheriff's and Constable's Sales.—Approved Dec. 21, 1821.

Whereas, the hours of sheriffs' and constables' sales are thought to be too short, and attended with great inconvenience to the sheriffs and constables, and frequently to the injury of parties concerned; for remedy whereof—

202. Be it enacted, That from and after the passing of this act, the hours of sheriffs' and constables' sales will be from ten o'clock in the forenoon until four o'clock in the afternoon. All laws and parts of laws militating against this act, be and the same are hereby repealed.

An Act to define and point out the mode of service of Writs of Scire Facias.—Approved Jan. 22, 1852.

203. Sec. I. Be it enacted, That all writs of scire facias shall be directed "To all and singular, the Sheriffs of the State of Georgia." And copies thereof issued by the clerk of the court in which said scire facias is pending, may be served by the sheriff of the county in which the party to be notified may reside, and the original returned to the office of said clerk. And that an original and copy or copies may issue for each county in which any party to be notified may reside.

Sec. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

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

204. Sec. I. Be it enacted, That from and immediately after the passage of this act, no city or county-sheriff shall be allowed to hold the office of constable.

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

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

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

205. Sec. I. Be it enacted, That every judge of the superior, or a majority of the justices of the inferior courts, of the respective counties throughout this State, is and are, and by intention of law, ought to have been taken, held, deemed and considered as competent in law, to take the bonds or obligations of sheriffs, and to qualify them as by law directed.

An Act to allow further time to Sheriffs and their Deputies, for the service of Writs, Process, Declarations and Bills in Equity.—Approved Feb. 27, 1856.

206. Sec. I. Be it enacted, That hereafter the sheriff and his deputy or deputies, in each and every county, shall be allowed five days after the time now fixed by law for filing bills of equity, and suits at common law, in the several superior and inferior courts of this State, for the purpose of serving all writs or declarations at common-law, or bills in equity. Any law, usage or custom, to the contrary notwithstanding.

An Act to compel purchasers of Mortgaged property, purchasers of Life-Estates, or Estates-for-term-of-years, in Personal Property, at Sheriff's, Coroner's, or Constable's sales, to give Bond.—Approved December 22, 1830.
207. From and after the passage of this act, it shall be the duty of purchasers of personal property, under the incumbrance of mortgage or mortgages, at sheriff’s, coroner’s [or] constable’s sale, to give bond and security to said sheriff, coroner or constable, in double the value of the property so sold, (of which the officer selling shall be the judge;) conditioned not to move said property out of said State, and deliver up the same to the mortgagee, his heirs or assigns, on demand made, after foreclosure of said mortgage or mortgages: Provided, the mortgagee, his agent or attorney, shall tender an affidavit, previous to the sale thereof, to the officer selling said property, stating that he, she, or they, are just and bond fide mortgagees thereof, and that he, she, or they, apprehend the loss of said property, unless bond be given in terms of this act.

208. Sec. II. When any person shall purchase, at any sheriff’s, coroner’s or constable’s sale, a life-estate, or an estate-for-term-of-years, in personal property, it shall be the duty of said sheriff, coroner or constable, to require of said purchaser bond and security, as aforesaid, for the delivery of said property to the party entitled in remainder: Provided, the same is required by said party, his agent or attorney, who shall make affidavit of their right to said property, which shall be tendered to the officer selling previous to sale; which bonds, when taken, shall be filed in the clerk’s office of the superior court of the county where said sale is made, subject to be sued on for the benefit and use of the said party, whenever the particular estate is determined; which said court shall have power, on sufficient cause shown, to compel said obligor to give additional security, from time to time, as justice may require, on ten days’ previous notice being given.

209. Sec. III. On failure of said purchaser to give bond and security, as aforesaid, it shall be the duty of the said sheriff, coroner, or constable, to re-sell the said property, at the risk and loss of such purchaser.

Sec. IV. All laws or parts of laws militating against this act are hereby repealed.

Bond to return Mortgaged Property.

STATE OF GEORGIA,  

Houston County.  

We, John Doe as principal, and Richard Roe as security, hereby acknowledge ourselves held and bound to Madison Marshall, Sheriff of said County, in the sum of one thousand dollars, subject to the following condition—

The condition of the above obligation, is as follows: whereas, said John Doe, purchased at the sale of said Sheriff, a certain Negro boy named Charles, sold as the property of John Smith. And whereas, William Thomas, claims to hold a Mortgage on said Negro boy: now, should said John Doe not move said Negro boy out of said State, and deliver up the same to said William Thomas, the Mortgagee, his heirs or assigns, on demand made after the foreclosure of the Mortgage of said William Thomas, then this obligation to be void; else, of force.

This May 1, 1859.

Attest—

James Mack, J. P.

John Doe, principal, [L. S.]

Richard Roe, security, [L. S.]

Affidavit of Mortgagee.

STATE OF GEORGIA,  

Houston County.  

Personally appeared before the undersigned, a Justice of the Peace in and for said County, William Thomas, who being duly sworn, saith that he is the just and
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We, Houston WILLIAM in Richard security, WiLLTS how List of procured, Jnroi-s List of said County, by virtue of a fieri facias against said John Smith, and advertised to be sold on the first Tuesday in May next; and that deponent apprehends the loss of said Negro boy to answer said Mortgage, unless Bond be given in terms of the statute in such cases made and provided.

Sworn to and subscribed, before me, this April 10, 1859. 

James Mack, J. P.

WILLIAM THOMAS.

Bond of Purchaser of Life-Estate.

STATE OF GEORGIA. 

We, John Doe as principal, and Richard Roe as security, hereby acknowledge ourselves held and bound to Madison Marshall, Sheriff of said County, in the sum of one thousand dollars, subject to the following condition—

The condition of the above obligation is as follows: whereas, said John Doe purchased at the sale of said Sheriff a certain Negro girl named Betsy, sold as the property of James Hall, who held but a Life-Estate of said Negro girl, and which Life-Estate only was sold by said Sheriff. And whereas, Willis Cason claims to be Remainder-man to said Negro girl. Now, should said John Doe, well and truly, not move said Negro out of said State, and shall deliver said Negro girl Betsy to said Remainder-man, when said Life-Estate so purchased by him, is over and determined, then this obligation to be void; otherwise, of force. This May 1, 1859.

Attest—

James Mack, J. P.

JOHN DOE, principal, [L. S.]
RICHARD ROE, security, [L. S.]

Affidavit of Remainder-Man.

STATE OF GEORGIA.

In person appeared before the undersigned, a Justice of the Peace in and for said County, Willis Cason, who being duly sworn, saith that he claims to be Remainder-man to a certain Negro girl named Betsy, in which Negro girl James Hall is possessed of a Life-Estate, which Life-Estate has been levied on as the property of said James Hall, and advertised to be sold, by the Sheriff of said County, on the first Tuesday in May next. And deponent further saith, that he apprehends the loss of said Negro girl, unless Bond be given in terms of the Statute in such case made and provided.

Sworn to and subscribed, before me, this April 10, 1859. 

James Mack, J. P.

WILLIS CASOn.

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210. Sec. XXXVIII. The clerks of the superior courts of the respective counties, shall procure from the tax collector of such county, and how procured. furnish to the court, within two months, a list of persons liable and qualified to serve as grand and petit jurors, agreeably to the qualifications
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herein-after prescribed. And all free male white citizens, above the age of twenty-one years and under sixty years, [see 237.] are declared to be qualified and liable to serve as petit jurors for the trial of all civil causes for recovery of debts or damages, to any amount whatsoever. But no person shall be capable 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 freehold; 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 not qualified as aforesaid, shall be returned on any jury, he shall be discharged on the challenge and proof thereof, of either of the 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.

211. Sec. XXXIX. The clerks of the several courts are required in presence or under the direction of the judge or judges of such court, to regulate and correct the several jury lists annually, by particularly specifying in distinct columns, the persons most able, discreet, and qualified, as herein mentioned, to serve as grand jurors. Which list so corrected, shall be committed to the safe-keeping of the clerks of such courts respectively; and the clerks of such courts shall immediately after receiving such lists, fairly enter the same in a book for that purpose, to be provided by such clerk, at his own expense, distinguishing in separate columns, the persons selected to serve as grand jurors, and those for the trial of civil and criminal causes as aforesaid. And the names of the persons so selected, shall be written on separate pieces of paper and put into the different apartments of a jury-box, to be provided by the clerk, at the public expense; in the construction and manner herein-after prescribed, to wit: there shall be an apartment in the said jury-box marked No. 1, in which shall be placed the names of all the persons selected to serve as grand jurors, and another apartment marked No. 2, into which shall be placed the names of all persons selected for the trial of civil and criminal causes as aforesaid; which box shall be kept locked; and no jury shall be drawn or impaneled but in the presence of one or more of the judges and clerk of the court. Nor shall any clerk of the court or other person having the custody of the jury-box, presume on any pretence whatsoever, to open the said jury-box, transpose or alter the names, except it be in the presence of the judge or justices, officially attending for the purpose of drawing jurors, or correcting the list, under penalty of being dealt with in the manner herein pointed out for mal-practice in office.

212. Sec. XL. The said judge or justices and clerk of the court, or person having custody of the key, shall previous to the adjournment of any superior court, or at least two months prior to the sitting of the next court, cause to be drawn out of the apartment of the said box marked No. 1, not less than twenty-three nor more than thirty-six names, as grand jurors. And out of the apartment marked No. 2, not less than forty-eight nor more than seventy-two names, as petit jurors, for the trial of civil and criminal causes, as aforesaid. Which names so drawn out, shall after an account is taken of them, at each term or time of drawing, be carefully rolled up again, and deposited in the two other apartments to be provided in such jury-box, marked Nos. 3 and 4, to wit: the names of the grand jurors in the division No. 3, and the names of the petit jurors in the division No. 4. And when all the names shall be drawn out of the apartments Nos. 1 and 2 aforesaid, they shall then commence drawing from the apartments Nos. 3 and 4, and return them into the [apartments] Nos. 1 and 2, and so on alternately.—[See 219.]
213. Sec. XLI. No grand jury shall consist of less than eighteen or more than twenty-three, but twelve may find a bill or make a presentment. And the names of the several jurors to be drawn as aforesaid, shall immediately after they are drawn out, be entered by the clerk on the minute-book of such court. And if it shall so happen, that from any unavoidable circumstance, the judge shall not attend at the time appointed for holding the superior court of any county, he shall nevertheless, attend in person for the purpose of drawing jurors, or shall transmit to the justices of the inferior court of such county, a request in writing, that they, or any two of them, attend at the clerk’s office, on some convenient day, at least two months preceding the next term, for the purpose of drawing grand and petit jurors, in manner herein-before directed. And the said judges of the superior courts are declared to be responsible for the legal and regular drawing of jurors, in the respective circuits in which they may preside. And in case of such unavoidable circumstance, specially stated by any judge of the superior court, the said justices, or any two of them, shall and are hereby required, to conform to such request, by attending and drawing jurors, agreeably to this act.

214. Sec. XLII. 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 hereunto 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 jurors as aforesaid, to the sheriff of the county or his deputy.

215. 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 thereunto annexed, to be served with a summons, at least ten days before the sitting of the court for which they are drawn and empannelled. 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 judge of the superior 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.) Which shall be signed by the sheriff or his lawful deputy for the time being. Which sheriff or lawful deputy aforesaid, shall make return of all such precepts; in each of which he shall set forth the names of all such persons as shall have been summoned by virtue of such writs or precepts, and the time when they were summoned; and also, the names of the persons whom he may not have summoned, together with the reasons why they were not summoned, on pain of being fined by the court.

216. Sec. XLIV. The clerk of the court shall make due 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
JUDICIARY.—JURIES.

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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 excuse, to be made 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 bystanders, 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.

217. Sec. XLV. The oath to be administered to petit jurors in civil cases Oath of Petit 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."

**Precept for Summoning Jurors.**

STATE OF GEORGIA, To Madison Marshall, Sheriff of said County:

Houston County.

You are hereby commanded and required to summon the several persons named in the Pannel hereunto annexed, to be and appear at the Superior Court, to be holden in and for said County of Houston, on the fourth Monday in October next, by ten o'clock in the forenoon of that day; then and there to be sworn as Grand and Special (or Petit, as the case may be,) Jurors; to serve during the October Term of said Court, in the year of our Lord, eighteen hundred and fifty-nine. And this, said Jurors, nor either of them, may omit, under the penalty of forty dollars, (if a Grand Juror, or twenty dollars, if a Petit Juror,) they having been drawn as Jurors, as aforesaid, according to law. And have you then and there this Precept.

Witness, the Hon. Henry G. Lamar, Judge of said Court, this May 1, 1859.

WILLIAM H. MILLER, Clerk.

**List of Jurors annexed to the above Precept.**

1. Samuel Felder, 4. Julius C. Gilbert,
2. William H. Talton, 5. John H. Powers,

**Affidavit of Defaulting Juror.**

STATE OF GEORGIA, In person appeared before the undersigned, Houston County. Samuel Felder, who being sworn, saith, that he was summoned to attend the Superior Court as a Grand Juror, at the last term of said Court; that he made default in not attending said Court, for which default he has been fined; that his reason for not attending said Court, was that he was sick and entirely unable to attend.

Sworn to and subscribed, before me, this November 1, 1859.

SIMPSON MOORE, J. P.

SAMUEL FELDER.
An Act for the better selection and drawing Grand Juries for the several Counties in this State.—Approved Dec. 7, 1805.

218. Sec. I. It shall be the duty of the justices of the inferior courts of each county, together with the sheriff and clerk, or a majority of them, to convene at the court-house of their respective counties, on the first Monday in June next, and biennially, on the first Monday in June thereafter; whose duty it shall be to select from the books of the receiver of tax returns for their respective counties, fit and proper persons to serve as grand jurors. And shall make a list of persons so selected, and transmit it, under their hands, to the next superior court of their respective counties. And it shall be the duty of the judge then presiding, to cause the clerk of the said superior court to make out tickets, with the names of the persons so selected, which tickets shall be put in a box to be provided by the clerk, at the public expense; which said box shall have two apartments, marked numbers one and two. And the clerks of said courts shall, immediately after receiving such lists, fairly enter the same in a book for that purpose, to be provided at his own expense, distinguishing in separate columns, the persons liable to serve as grand jurors and those for the trial of civil and criminal causes, as pointed out by law. Which said box shall be locked and sealed up by the judge, and placed in the care of the clerk, and the key in the care of the sheriff. And no grand jury shall be drawn and impannelled but in the presence of the judge in open court; nor shall any clerk of the court, or other person having the custody of the jury-box, presume on any pretence whatever, to open the said jury-box, transpose or alter the names, except it be by the direction of the judge in open court, attending for the purpose of drawing jurors, under the penalty of being dealt with in the manner pointed out by law for mal-practice in office.—[See 236.]

219. Sec. II. The said judge in open court, shall unlock and break the seal, and cause to be drawn out of the apartment of the said box, marked number one, not less than twenty-three nor more than thirty-six names, to serve as grand jurors; which names so drawn out, shall after an account is taken of them, at each time of drawing, be carefully deposited in the other apartment of such box, marked number two. And when all the names shall be drawn out of the apartment number one, as aforesaid, they shall then commence drawing from the apartment number two and return them into number one, and so on alternately. But no name so deposited, shall on any pretence whatever, be destroyed, except it is within the knowledge of the judge that the said juror is either dead, removed out of the county, or otherwise disqualified by law, or the sheriff certify the same.

220. Sec. III. If it shall so happen that there should be a failure of the court in consequence of the non-attendance of the judge, then and in that case, the jurors being summoned, shall stand over to the next succeeding term, in the same manner as suitors and witnesses do in like cases: Provided always, that if the said justices, sheriff and clerk aforesaid, shall fail to make such selection on the day aforesaid, that then it shall be the duty of the said justices, sheriff and clerk aforesaid, or a majority of them, to make such selection, at or before the next superior court thereafter, which shall be held in their respective counties.—[See 228.]

221. Sec. IV. So much of an act, entitled "an act to amend an act, entitled an act to revise and amend the judiciary system of this State," passed at Louisville, the 16th day of February, 1799, as militates against this act, be and the same is hereby repealed.—[See 236.]

An Act to give Relief to all ordained Ministers of the Gospel, so far as respects their serving as Jurors, or doing Militia duty.—Approved Dec. 12, 1809.
Whereas, the ordained Ministers of the Gospel are not by law exempted from serving as Jurors, or doing Militia duty; for remedy whereof—

222. Sec. I. Be it enacted, That from and after the first day of January next, no ordained Minister of the Gospel shall be compelled to do militia duty within the limits of this State, in time of peace.

223. Sec. II. That the judges of the superior courts, the justices of the inferior courts, and justices of the peace, are hereby authorized, on application, to excuse them from service on the juries of their different courts; the application to be made in writing, or otherwise.

An Act to amend the several Judiciary acts now in force in this State.—Approved Dec. 15, 1810.

224. All special jurors shall be taken from the grand jury list of the Special Jurors county, and struck in the presence of the court, in the following manner—how selected. the clerk shall produce a list of the grand jurors present and there impaneled, from which the parties plaintiff and defendant, or their attorney, may strike out one alternately until there shall be but twelve jurors left, who shall forthwith be impaneled and sworn as special jurors, to try the appeal cause; in all cases the appellants shall strike first. And in case of refusal in either to strike such special jurors after due notice given for the purpose and proof thereof, the judge before whom such notice is given for such special jury to be impaneled, shall on behalf of such absent party, or his attorney, proceed in the same way and manner, as if the party absent or refusing had been present, or consented to the same.

An Act to amend the 111th section of the Judiciary Law of this State.—Approved Dec. 4, 1811.

225. Sec. I. The oath to be administered to special jurors, except in cases of divorce, shall be in the words following, to wit: "You shall well and truly try each cause submitted to you during the present term, and a true verdict give, according to equity and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either party: Provided, you are not discharged from the consideration of the case or cases submitted—so help you God."

An Act to admit Grand Jurors to give evidence.—Approved Dec. 10, 1812.

Whereas, doubts do exist as to the propriety of admitting grand jurors to give evidence against persons who may have been sworn before them when in session as a grand jury, on account of that part of the oath which requires them to keep secret the State's counsel, their own and their fellows'; which secrecy ought not to exist longer than the term, or after the bill is publicly read in court; for remedy whereof—

226. Sec. I. Be it enacted, That all grand jurors shall be competent Grand Jurors witnesses in any court of record in this State, where it may be necessary, on account of anything that may be given in evidence before them as a body of grand jurors. Any law to the contrary notwithstanding.

227. Sec. II. In future, the oath to be administered to the foreman of all grand juries, shall be as follows, viz.: "You, as foreman of the grand jury Grand Juries of the county of ——, shall diligently inquire, and true presentments make of all such matters and things as shall be given you in charge, or shall come to your knowledge touching the present service. The State's counsel, your fellows' and your own, you shall keep secret, unless called on to give evidence thereof in some court of law in this State. You shall present no one for envy, hatred or malice, nor shall you leave any one unpre-
sented from fear, favor, affection or reward, or the hope thereof; but you shall present all things truly and as they come to your knowledge—so help you God." And the same oath which is taken by the foreman, shall be taken by each and every member of any and all grand juries in this State.

Note.—In addition to the above oath, the Solicitor-General at the same time, swears the Foreman as a Special Juror and as a Juror to try Claim-Appeal cases. The Clerk then calls up four at a time, the other members of the Grand Jury who heard the Oaths as they were taken by the Foreman, and the Solicitor-General administers to them the following oath: "The same Oaths that your Foreman has taken on his part, you and each of you do take, and shall well and truly observe and keep, on your part—so help you God."

Should any of the members of the Grand Jury join the body after the Foreman has been sworn, the Oaths as administered to him must be administered to them in full.

AN ACT to authorize the Justices of the Inferior Courts in this State, to draw Grand and Petit Jurors, in certain cases.—Approved Nov. 30, 1815.

228. The justices of the inferior courts for the several counties in this State, or a majority of them, together with the sheriff and clerk of the superior court, in any of their several counties, be and they are hereby authorized and required, in all cases where there shall or may have been a failure of the judges of the superior courts, in drawing grand and petit jurors agreeably to law, to assemble at the court-house in their several counties, at any time which shall be to them convenient, and proceed to open their jury-boxes, and draw from said boxes a sufficient number of names to serve as grand and petit jurors, for their or either of their said counties, at their next then depending superior courts. And the jury being so drawn, the said box or boxes again to seal and deliver, together with the keys, to the proper officer: Provided, that said assemblage and drawing shall be at least sixty days previous to the commencement of the superior court at which said jurors shall be liable to serve.—[And see next Act.]

An Act to authorize the Justices of the Inferior Courts in this State to draw Juries out of Term-time.—Approved Dec. 13, 1820.

229. Sec. I. From and after the passing of this act, that it shall be lawful in all cases where it happens that the justices of any inferior court, at the regular term of said court, shall omit drawing a jury to serve at the succeeding court, that the justices of said court, or any three of them, with the sheriff and clerk, meet at the place of holding such court, at least forty days previous to the sitting of said court, and draw a jury, under the same regulations that they ought to have done in term time.

230. Sec. II. When any inferior court in this State, at the regular term of said court, have omitted drawing a jury to serve at the next court, that they shall after the passing of this act, be authorized to draw a jury at any time, under the same regulation as in the preceding section. And that the said clerk of the inferior court shall immediately after the drawing of said jury as herein provided, make out a list of the jury so drawn, and place the same in the hands of the sheriff or deputy, who shall proceed immediately after receiving the same, to summon the jury so drawn, in the same manner as if they had been drawn at the regular term of said court. And the said jurors so drawn and summoned, shall be bound and liable to serve in the same manner, and under the same penalties, as if drawn at the regular term of said court. Any law to the contrary notwithstanding.

An Act to define the duties of Grand Jurors in this State, so far as respects the time they are to be considered bound to notice Offences committed in their respective counties.—Approved Dec. 22, 1829.
231. Grand jurors shall be bound only to notice or make presentment of such offences as may or shall come to their knowledge or observation, after they shall have been sworn. But nothing in this act shall be considered as impairing their right as jurors, to make presentments of any violations of the laws which they may know to have been committed at any previous time.

Sec. II. All laws and parts of laws militating against the intent and meaning of this act, are hereby repealed.

An Act to amend and alter the Oath of Bailiffs who take charge of Special and Petit Juries, and for other purposes.—Approved Dec. 26, 1831.

Whereas, the oath now administered to Bailiffs, requires them to keep the Juries without meat, drink, or fire, candle-light and water only excepted. And whereas, it often happens, that in cases of much litigation, Juries are unable, for a great length of time, to agree upon a verdict, and are thereby exposed to cold and hunger; for remedy whereof—

232. Sec. I. Be it enacted, That the following shall be the oath to be administered to all bailiffs sworn to take charge of special and petit juries, in the superior and inferior courts of this State, to wit: "You shall take this jury, and all others committed to your charge during the present term, to the jury-room, or some other private and convenient place, where you shall keep them without meat, drink or fire, candle-light and water only excepted, unless otherwise directed by the court. You shall not speak to them yourself, nor suffer others to speak to them, unless it be by leave of the court; to ask them if they have agreed upon a verdict, or are likely to agree; all this you shall do, to the best of your skill and power—so help you God."

233. Sec. II. Whenever it shall so happen that the jury is confined in the investigation of any case, for a length of time, which exposes them to hunger or cold, or both, the court may on application from said jury, direct them to be furnished, at their own expense, with such nourishments, as in his own judgment, may seem just and proper. And permit them to have provisions and fire, or either, if circumstances should, in the judgment of the court, require it.

234. Sec. III. The said bailiffs shall receive from the county-treasurer, (or clerk of the court, where there is no treasurer,) of each county, $1 per day, in addition to their present fees, for each day the said bailiffs shall serve, in attendance on the juries.—[See Fee-Bill, for additional Fees.]

An Act to relieve the Justices of the Inferior Court from Jury-duty.—Approved Feb. 21, 1850.

235. Sec. I. Be it enacted, That from and after the passage of this act, all justices of the inferior courts of this State, be and the same are hereby, at their own option, exempt from jury duty.

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

An Act to provide for the selection of Grand and Petit Jurors, in certain cases.—Approved March 3, 1856.

236. Sec. I. Be it enacted, That whenever the jury-boxes or lists of names of grand and petit jurors of any county shall be destroyed, it shall and may be lawful for the justices of the inferior court, clerk and sheriff thereof, or a majority of them, so soon thereafter as may be practicable, to meet at the court-house in such county, and select lists of names of grand and petit jurors, and arrange them in boxes, as provided for by act of December 7th, 1805.
An Act declaring who are qualified and liable to serve as Jurors in criminal cases; regulating the manner of impanning a Jury in such cases; declaring who are competent Jurors, and the mode and manner of ascertaining such competency, and for other purposes therein mentioned.

—Approved Feb. 28, 1856.

237. Sec. I. All free white male citizens who have arrived to the age of twenty-one years, and not over sixty years, and residents in the county where the trial is to be had, and not being idiots or lunatics, shall be qualified and liable to serve as jurors upon the trial of all criminal cases.

238. Sec. II. When any person stands indicted for an offence which upon conviction, will subject him to the punishment of death, or confinement in the penitentiary, it shall be the duty of the court, upon the request either of the State or the accused, to have empanelled forty-eight men, from whom to select a jury for the trial of such offender.

239. Sec. III. Said panel of forty-eight men shall be composed of the twenty-four men who are serving as petit jurors at the court when the trial is had, and twenty-four men summoned by order of the court, indiscriminately and impartially from the citizens of the county, qualified as aforesaid. And if twenty-four jurors are not in attendance, the panel of forty-eight shall be made up by persons served [liable to serve] as aforesaid.

240. Sec. IV. It shall be the duty of the clerk to make out three lists of said panel, one of which shall be furnished to the counsel for the State, one for the counsel of the accused, and one the clerk shall keep himself. After such lists are thus furnished, the clerk shall call over the names of the persons composing the panel, and so soon as this is done, the panel shall be immediately put on the accused.

241. Sec. V. If the accused thinks proper, he may then challenge the array, which challenge shall be made in writing, particularly specifying the causes of such challenge; and it shall be the duty of the court immediately to determine the sufficiency of the same.

242. Sec. VI. If the court determines the causes of such challenge sufficient, the panel shall be discharged, and the court shall immediately cause a new panel of forty-eight men to be summoned indiscriminately and impartially, from the citizens of the county, qualified as aforesaid; and shall proceed with this panel, in the same manner as is prescribed by this act in relation to the first panel; and if the accused shall challenge this panel and the causes of challenge shall be adjudged sufficient by the court, such panel shall be discharged, and the court shall immediately cause another panel to be summoned, in manner aforesaid; and shall so proceed until a panel is obtained to which there is no legal objection.

243. Sec. VII. If the first panel shall be challenged and the causes of the challenge shall be adjudicated insufficient by the court, the clerk shall call the first name on the list, and the person so called shall be presented to the accused in such manner that he can distinctly see him, and then it shall be lawful for the State, or the accused, to make the following objections, to the person so presented:

First, that he is not a free white citizen, resident in the county.

Second, that he is not twenty-one years of age, or that he is over sixty years of age.

Third, that he is an idiot, or lunatic, or intoxicated.

Fourth, that he is so near of kindred to the prosecutor, or the deceased, as to disqualify [him] by law, from serving on the jury.

244. Sec. VIII. It shall be the duty of the court immediately to hear such evidence, in relation to the truth of said objections, as he shall see proper; and if he shall be satisfied that either of said objections
are true, the person so presented shall be set aside for cause; and the clerk shall call the next person on the list, and the court shall proceed with him in the same manner as with the person first presented, and so on with every person presented, and the State or the accused may make the same objection to any person presented, which shall be disposed of in the same manner.

245. Sec. IX. If no objection is made as aforesaid, or being made, is overruled by the court, the attorney prosecuting for the State, shall put to the person presented as aforesaid, the following questions:

Have you, from having seen the crime committed, or having heard any part of the evidence delivered on oath, formed or expressed any opinion, as to the guilt or innocence of the accused?

If he shall answer this question in the negative, the following questions shall then be put to him:

Have you any prejudice or bias resting on your mind, for or against the accused?

If he shall answer this question in the negative, the following question shall be put to him:

Is your mind perfectly impartial, between the State and the accused? And if he shall answer this question in the affirmative, he shall be adjudged and held a competent juror, in all cases where the offence does not involve the life of the accused; but when it does involve his life, the following additional question shall be put to him:

Are you conscientiously opposed to capital punishment?

If he shall answer this question in the negative, the person so presented shall be held and adjudged a competent juror in capital cases also: Provided nevertheless, that either the State or the defendant, shall have the right to introduce evidence before the judge, to show that the answer, or any of them, of the jurors, are untrue; and it shall be the duty of the judge to determine upon the truth of such answer, as may be thus questioned before the court.

246. Sec. X. If the person so presented shall answer any of the said questions in the affirmative, except the one as to his mind being impartial between the State and the accused, and shall answer that question in the negative, he shall be set aside for cause, and the clerk shall call the next person on the list, and the court shall proceed to ascertain his competency in the manner aforesaid, and shall so proceed with each person presented as aforesaid, until a jury is impannelled to try the accused.

247. Sec. XI. If the person presented to the accused shall answer all the aforesaid questions in such manner as to render him a competent juror, or the judge upon an objection made, shall decide him to be competent, he shall then be immediately put upon the accused unless peremptorily challenged by the State, and when so put upon the accused, unless peremptorily challenged by him, shall be sworn as a juror to try said case; and the court shall proceed with every person presented to the accused in a like manner, as aforesaid, until a jury is impannelled to try said case.

248. Sec. XII. When the competency of a juror has been ascertained, in the manner herein-before prescribed, and said juror has been adjudged competent, as aforesaid, no other or further investigation shall be had in relation to his competency, either by triors or otherwise, but such jurors shall be considered and held free of all exception.

249. Sec. XIII. Nothing in this act contained shall be so construed as to give the State, or the accused in any case, more peremptory challenges than are now allowed by law.

Sec. XIV. [Repeals conflicting laws.]
Challenge to the Array.

STATE OF GEORGIA

Indictment for Murder.

JOHN DOE.

Superior Court, April Term, 1859.

The accused in the above indictment, having had the Array of Jurors, summoned in the above case, put upon him, hereby excepts to said Array, and for cause of exception says:

First, [Set out fully and at large, the cause of exception.]

Secondly, &c., &c.

All which is respectfully submitted to the consideration of the Court here presiding.

JOHN DOE, the accused.

AN ACT to authorize the Foreman of Grand-Juries to swear Witnesses.—

Approved Dec. 21, 1857.

250. Sec. I. Be it enacted, That from and after the passage of this act, it shall and may be lawful for the foreman of each grand-jury, in this State, to administer the oath now prescribed by law, to any and all witnesses who may be required to testify before grand-juries in this State.

Sec. II. [Repeals conflicting laws.]

The Oath.

"The evidence you shall give the Grand-Jury, on this Bill of Indictment, (or Presentment, as the case may be,) [here state the case:] shall be the truth, the whole truth, and nothing but the truth—so help you God."—Cobb's Penal Code, 195.

ATTORNEY AT LAW.

251. Sec. XXVI. 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.—[See next Act.]

AN ACT to amend and explain the XXIXth section of the Judiciary law of this State.—Approved, Dec. 7, 1812.

Whereas, the above-mentioned section of the judiciary law of this State, is not sufficiently explicit to effect the object for which it was intended—

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

253. Sec. II. Where any attorney shall institute a suit in any of the counties of this State, for any person who resides out of the county in...
which such suit is brought, and judgment shall be obtained thereon, and the
sheriff shall return the execution, "no property to be found;" that then the
plaintiff's attorney shall be bound for the costs of said suit. And the clerk
may issue his execution against the plaintiff and the attorney who brought
said suit, jointly; for the amount of the cost of such suit. And if any at-
torney shall retain in his hands any money received by him for any client,
after being by the court ordered to pay over the same to the principal, he
shall be struck from the list of attorneys, and never more suffered to plead
in any of the courts in this State.—[See County Officers and see next Act.]

AN ACT to continue in force the act passed on the seventh of December, 1812,
etitled "an act to amend and explain the twenty-ninth section of the
Judi ciary law of this State," and to require non-resident Attorneys to pay
Costs in certain cases commenced by them.—Approved Dec. 23, 1839.

Whereas, it is held in some of the Judicial Circuits of this State, that the said
act, so far as the same relates to the liability of Attorneys for Costs, has been
repealed by the act passed on the twentieth of December, 1834, entitled "an
act to define the mode in which cost under the act, entitled an act to revise
and amend an act for ascertaining the Fees of Public Officers of this State,
passed the 18th December, 1792, shall be taxed and collected in future;"
which repeal was not contemplated by the legislature; therefore—

254. Sec. I. Be it enacted, That the said first-recited act, be and the
same is hereby fully re-enacted and continued in full force.

255. Sec. II. It shall and may be lawful for the proper officers to demand
and receive their full costs from any attorney who resides out of this State,
before they shall be bound to perform any service in any cause commenced
by said attorney, where the plaintiff shall reside out of this State, or any
county thereof.

AN ACT for the better regulating the admission of Attorneys to Plead and
Practise in the several Courts of Law and Equity, within this State.—
Approved Dec. 8, 1806.

256. Sec. I. From and after the passing of this act, all and every person Attorney how
or persons whatsoever, who are citizens of this State, may on application to
the judge of the superior court, be admitted to practice as an attorney: Provided,
such person shall produce satisfactory evidence of his moral recti-
tude, and shall undergo an examination in open court, upon a day assigned
for that purpose, by the judge. Any law, usage or custom, to the contrary
notwithstanding.—[See the Forms.]

257. Sec. II. The rule of court relative to the admission of attorneys, No particular
time of study required.
which requires the applicant to study any particular length of time in the
office of any judge or practitioner of law, be and the same is hereby declared
to be abrogated and void.

AN ACT to authorize certain persons therein described to Plead and Practise
in the Courts of Law and Equity in this State, on the terms therein men-
tioned.—Approved Dec. 20, 1823.

258. Sec. III. When any application for admission to plead and practice
in the courts of law and equity in this State, shall be made by any person
who shall produce to the court in which such application shall be made, the
certificate of a judge of the court of common pleas, or judge of the court of
equity of the State of South Carolina, duly attested under the seal of either of
the said courts, stating in substance that such person has practised for three
years immediately preceding, in the county courts of the said State, as an
attorney and solicitor, and has maintained a good moral and professional rep-

where the Plaintiff is non-resident and Defend-
ant insolvent. Defaulting Attorney to be stricken
from roll. Act of 1812 re-enacted.
Non-resident Attorney to pay Costs in
advance. Admitted.
utation, he shall be forthwith admitted to plead and practise as an attorney and solicitor in the courts of law and equity in the State of Georgia, without a compliance of any form or requisite, except only the payment of the usual fees and taking the usual oath: Provided always, that this act shall not go into operation until an act similar in its provisions, shall have been passed by the legislature of the State of South Carolina.—[See 260.]

An Act to prohibit the Judges of the Superior Courts of this State, from practising as Attorneys, Proctors, or Solicitors, in the District or Circuit Courts of the United States for the District of Georgia.—Approved Dec. 20, 1824.

259. Sec. I. From and after the 25th of November next, the judges of the superior courts of this State, be and they are hereby prohibited from practising as attorneys, proctors, or solicitors, in the district or circuit courts of the United States for the district of Georgia.—[See 265.]

An Act to provide for the admission of Attorneys and Solicitors from adjoining States and Territories, to Plead and Practise Law in this State,—Approved Dec. 19, 1829.

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

261. Sec. II. The clerk of the superior court who issues such license, shall be entitled to and receive the same fee therefor, to be paid by said applicant, as is usually paid by persons admitted, who are citizens of this State.

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

An Act to make null and void all Contracts made and entered into, in writing or otherwise, between party or parties, Plaintiff or Defendant, and Attorney or Attorneys at Law, where the Attorneys shall fail or neglect to attend to the suit or suits, which he or they contracted to do; (in person, or by some competent Attorney;) until the rendition of a Judgment.—Approved Dec. 26, 1831.

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

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

An Act to permit Attorneys of the State of Alabama to Plead and Practise in the several Courts of Law and Equity in this State.—Approved Dec. 23, 1835.

264. Sec. I. From and after the passage of this act, it shall and may be lawful for any judge of the superior courts of this State, upon application made by any licensed attorney of the State of Alabama, either in term-time or in vacation, to cause a license to be issued by any of the clerks of the superior courts, authorizing said attorney to plead and practise in the several courts of law and equity in this State: Provided, the attorney making such application shall produce before said judge of the superior court, to whom he applies for admission, as aforesaid, his license to plead and practise in the courts of Alabama, and a certificate of his good moral character, signed by some judge of the courts of said State, and pays to the clerk issuing the license, the sum of five dollars for the same.

Sec. II. [Repeals all conflicting laws.]

An Act to prohibit certain persons from Pleading and Practising Law, in certain cases.—Approved Dec. 22, 1843.

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

An Act to regulate the admission of Attorneys to Plead and Practise Law in the several Courts of Law and Equity, within this State.—Approved Dec. 22, 1847.

266. Sec. I. Be it enacted, That from and after the passage of this act, any person or persons, who are citizens of this State, may on application to a judge of the superior court, be admitted to practise as an attorney in the courts of law and equity of this State, without any qualification as to age: Provided, such person or persons shall produce satisfactory evidence of moral rectitude, and shall undergo an approved examination in open court.

267. Sec. II. Any person or persons, under the age of twenty-one years, who may be admitted by virtue of this act, shall be liable, in all cases, as if he or they were of full age.

An Act to regulate the Testimony of Attorneys at Law.—Approved Feb. 21, 1850.

268. Be it enacted, That from and after the passage of this act, it shall not be lawful for any attorney-at-law or in equity, in any case hereafter commenced, to give testimony in any court of law or equity in this State, of any matter or thing, either for or against his client, the knowledge of which he may have acquired from his client, or during the existence and by Attorney at law may not testify against or in favor of his client.
JUDICIAL.—ATTORNEY AT LAW.

But must Answer in Equity. reason of the relationship of client and attorney: Provided nevertheless, that no attorney shall be exempted from making answer as defendant, when a proper case shall be made in equity, and his answer required, as by the laws now in existence.

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

Form of Application and Admission.

PETITION.

STATE OF GEORGIA, } To the honorable Henry G. Lamar, Judge of
Houston County. } the Superior Courts of the Macon Circuit.

The undersigned Petitioner respectfully showeth, that with a view to the Practise of the Law, as a profession, he has applied himself to its study. That supposing he may safely go into the Practice, he prays such proceedings as are usual and lawful, for the examination and admission of applicants; at such time as may suit the Court, during the present Term. Respectfully submitted, October Term, 1859.

CLINTON L. DUNCAN.

Certificate of Character.

STATE OF GEORGIA, } To the honorable Henry G. Lamar, Judge of
Houston County. } the Superior Courts of the Macon Circuit.

The undersigned certifies, that he has, for a number of years, been acquainted with the Petitioner, CLINTON L. DUNCAN; that he is of good moral character, and has studied Law with a view to its Practice. October 25, 1859.

JOHN M. GILES.

Oath of the Applicant.

"I, Clinton L. Duncan, do solemnly swear, (or affirm, as the case may be,) that I will justly and uprightly, demean myself, according to the Laws, as an Attorney, Counsellor and Solicitor. And that I will support and defend the Constitution of the United States, and the Constitution of the State of Georgia—so help me God."

Commission.

STATE OF GEORGIA.—At a Superior Court, holden in and for the County of Houston, at October Term, 1859.

Know all men by these presents, that at the present sitting of this Court, CLINTON L. DUNCAN, made his application for leave to Plead and Practise in the several Courts of Law and Equity in this State; whereupon the said CLINTON L. DUNCAN having produced satisfactory evidence of his good moral character, and having been examined in open Court, and being found well acquainted with and skilled in the Laws, he was admitted by the Court, to all the privileges of an Attorney, Solicitor and Counsellor, in the several Courts of Law and Equity in this State.

In testimony whereof the presiding Judge has hereunto set his hand, with the seal of the Court annexed, this October 25, 1859.

[LS] HENRY G. LAMAR, J. M. C.

William H. Miller, Clerk.
Eighth Common Law Rule.—"Every person making application for admission to the Bar, must apply to some Superior Court in this State, and produce satisfactory evidence to the Court, [of his being twenty-one years of age, this is unnecessary—see act of 1847;] of good moral character, [and of having read Law; unnecessary, see act of 1806.] A certificate of good moral character, [and of the applicant's being of full age,] signed by any Judge of the Superior Courts in this State, or any reputable practising Attorney thereof, will be deemed sufficient; but from other persons, a written affidavit will be required; and shall undergo the whole examination, touching his qualifications, in open Court. All applicants for admission shall be examined on the principles of the Common and Statute Law of England, in force in this State; the principles of Equity; the Constitution of the United States, and of the State of Georgia; the Statute Laws of this State, and the Rules of Court. And in no case, shall any person be admitted who shall not be considered by the Court, to be qualified for the Practise of the Law."

License of an Attorney from another State or Territory.

STATE OF GEORGIA.

At a Superior Court, held in and for the County of Houston, at October Term, 1859, James Jones, of the State of Tennessee, a Practising Attorney of said State of Tennessee, made application, in writing, for permission to Plead and Practise in the Courts of Law and Equity, in this State. And said James Jones, having given satisfactory evidence of his being an Attorney in said State of Tennessee, and of his good moral character; it is ordered, that the said James Jones, be and he is hereby admitted to all the privileges and immunities of an Attorney at Law of this State, as fully as if said James Jones were a citizen of this State.

Witness the honorable Henry G. Lamar, Judge of said Court.

[ETO.]

WILLIAM H. MILLER, Clerk.

An Act to permit Practising Attorneys, to hold the Office and discharge the duties of Justice of the Peace, in this State.—Approved March 5, 1856.

269. Sec. I. Be it enacted, That from and after the passage of this act, it may and shall be lawful for any practising attorney to hold and discharge the duties of justice of the peace, in the State of Georgia. All laws and parts of laws, heretofore passed, to the contrary notwithstanding.

SPECIALTIES, ETC.

270. 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 other thing, shall be of equal dignity and be negociable by endorsement, in such manner and under such restrictions as are prescribed in the case of promissory notes: Provided,
Negociability may be restrained.

Contract for Specific Article how settled.

Holidays not to be counted.

Days of Grace when not allowed.

AN ACT to ascertain and establish a certain and uniform mode of calculating the prices of Specific Articles, in contracts between individual and individual in this State.—Approved Dec. 1, 1800.

Whereas, it doth frequently happen that in the ordinary transactions between individuals of this State, Contracts are entered into for the payment of Specific Articles, which Contracts may have been either verbal or written. And whereas, great difficulty and uncertainty has occurred in the trial of such cases in Courts of Justice, in ascertaining the time from which the prices of such Specific Article should be calculated; for remedy whereof, and for the establishment of some precise mode of estimation in future—

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

Note for Specific Article.

Twelve months after date, I promise to pay John Doe or bearer, ten Cows and Calves; for value received, this May 1, 1850.

RICHARD ROE.

An Act to designate the Holidays to be observed in the acceptance and payment of Bills-of-Exchange and Promissory Notes; and to disallow the three days commonly called the three days of grace, on all Sight-Drafts, or Bills-of-Exchange drawn payable at sight.—Approved Feb. 8, 1850.

272. Sec. I. Be it enacted, That the following days, namely—the first day of January, commonly called New Year's Day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas-day, and any day appointed or recommended by the Governor of the State of Georgia, Mayor of any City, or other municipal authority in said State, or the President of the United States, as a day of Fast or Thanksgiving, shall for all purposes whatsoever, as regards the presenting for payment or acceptance, and of protesting, and giving notice of the dishonor of any bill or bills-of-exchange, bank check or checks, and promissory note or notes, made after the passing of this act, be treated and considered, as is the first day of the week, commonly called Sunday.

273. Sec. II. Three days, commonly called the three days of grace, shall not be allowed upon any sight-drafts or bills-of-exchange, drawn payable at sight, after the passage of this act; but the same shall be payable on presentation thereof, subject to the provisions of the first section of this act.

Sec. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.
BILLS-OF-EXCHANGE.


274. Whenever any bill-of-exchange, hereafter to be drawn or negotiated within this State, upon any person or persons of or in any State, territory, or district, of the United States, shall be returned unpaid, and shall have been duly protested for non-payment, in the manner usual in cases of foreign bills-of-exchange, the person or persons to whom the same shall or may be payable, shall be entitled to recover and receive of and from the drawer or drawers; or the endorser or endorsers of such bill-of-exchange, five per cent. damages, over and above the principal sum for [which] said bill-of-exchange shall have been drawn, together with lawful interest on the aggregate amount of such principal sum, from the time at which notice of such protest shall have been given, and the payment of the said principal sum and damages, shall have been demanded.—[See next Act.—And 278.]

An Act to reduce the damages upon bills-of-exchange drawn on any place beyond the limits of the United States, returned protested for non-payment, and to define more precisely the mode of settling the same on the principles of exchange.—Approved Dec. 24, 1827.

Whereas, the damages at present established by commercial custom and judicial decision in this State, upon foreign bills-of-exchange returned and protested, are much too high. And whereas, a doubt exists what is the legal mode of settlement; for remedy whereof—

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

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

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

An Act to alter and amend an act concerning Bills-of-Exchange, passed on the nineteenth December, 1823. Approved Dec. 21, 1839.

278. Sec. I. Be it enacted, That all the provisions of said act, be and Act of 1823, they are hereby extended to all bills-of-exchange hereafter drawn, in this State, upon or made payable [at] any place within the United States, out of this State; without reference to the residence of the drawer or acceptor.
Foreign Bill-of-Exchange.

Perry, May 1, 1859. Exchange for $1,000.
At two usances, (or at sight, or after date,) pay this my first Bill-of-Exchange, (second and third, of the same tenor and date, not paid,) to Messrs. Small & Wood, or order, (or bearer,) one thousand dollars; value received of them; and place the same to account, as per advice from yours, &c.,

To Mr. John Doe in Liverpool. Payable at Liverpool.

Richard Roe.

Inland Bill of-Exchange.

$1,000 Perry, May 1, 1859.
At sight, (or, on demand; or at ten days after sight; or, at ten days after date,) pay to Mr. John Doe or order, (or, bearer,) one thousand dollars, for value received.

To Mr. James Short, Merchant in Savannah. Payable at Savannah.

Richard Roe.

Check.

Bank of State of Georgia, Savannah, May 1, 1859.
$1,000 Pay to the order of John Doe, one thousand dollars.
Richard Roe, Cashier.

To the Cashier Planters' Bank, Savannah.

PROMISSORY NOTES.

Joint Note.

$1,000. Six months after date, we promise to pay John Doe, or bearer, one thousand dollars; for value received, this May 1, 1859.
Richard Roe.
John Stone.

$1,000. Eight months after date, I promise to pay John Doe, or bearer, one thousand dollars; for value received, this May 1, 1859.
Richard Roe.
John Stone.

Joint and several Promissory Note.

$1,000. Seven months after date, we or either of us, promise to pay John Doe, or bearer, one thousand dollars; for value received this May 1, 1859.
Richard Roe.
John Stone.
Promissory Note payable to order.

$1,000. Two months after date, I promise to pay John Doe, or order, one thousand dollars; for value received, this May 1, 1859.

Richard Roe.

$1,000. Two months after date, I promise to pay to the order of John Doe, one thousand dollars; for value received, this May 1, 1859.

Richard Roe.

Note—"Where the Note is payable to order, there must be a written endorsement by the Payee to vest the property in the Endorsee, and enable him to sue in his own name."

SETS-OFF.

279. 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 plaintiffs, such defendant shall and may offer the same as sets-off, and on due proof, shall be allowed the same.

TESTIMONY.

280. 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.

281. Sec. XX. Where it shall appear in manner aforesaid, that a witness in any cause shall have been duly summoned, and such witness shall fail to appear, it shall be the duty of the court, on motion, to issue an attachment against such defaulting witness, returnable to the next court, and shall fine such witness in a sum not exceeding three hundred dollars, unless he or she shall make a sufficient excuse for such non-attendance, which shall be judged of by the court; but shall nevertheless, be subject to the action of the person at whose suit such witness shall have been summoned,
for any damage which he, she or they, may have sustained by reason of such non-attendance.

282. 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.

283. 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 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.—[Sec 285.]

284. 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.

Subpoena.

STATE OF GEORGIA, } To James Lewis of said County—Greeting.
    Houston County. }

You are hereby commanded, that laying all other business aside, you be and appear at the Superior Court, to be held in and for said County, on the fourth Monday in October next; then and there to be sworn as a witness for the Plaintiff, in the cause of John Doe against Richard Roe, in an action of Assumpsit, in said Court pending. Fail not under the penalty of the law.

Witness, the honorable Henry G. Lamar, Judge of said Court, this June 1, 1859.

WILLIAM H. MILLER, Clerk.

Affidavit on the back of the Subpoena.

STATE OF GEORGIA, } In person appeared before the undersigned,
    Houston County.  

James Lewis, the Witness in said writ mentioned, who after being sworn saith, that he attended Court six days in obedience to this Subpoena. Amount due four dollars and fifty cents.

Sworn to and subscribed before me, this October 30, 1859.}

James Mack, J. P.

Examined and approved—William H. Miller, Clerk.
AN ACT to amend the laws of this State, pointing out the manner of collecting witnesses' fees for their attendance under Subpoena, in certain cases.—Approved Nov. 26, 1842.

285. Sec. I. Be it enacted, That from and after the passage of this act, in the superior and inferior courts of this State, it shall not be necessary for the judge or presiding justice to examine and sign the accounts of witnesses serving under subpoenas, as is now required by law, but the same being examined and signed by the clerk of such court, shall have the same force and effect as now directed by law.

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

AN ACT to enable parties litigant in the Superior and Inferior Courts of this State, to compel the production of written Testimony, when the same may be in the possession of persons not parties to the cause, and residing without the County where such cause is pending. And for other purposes.—Approved Dec. 19, 1829.

Whereas, parties litigant in the Courts of this State, frequently suffer great inconvenience, and sometimes gross injustice, by reason of the difficulty of procuring written Testimony which may be necessary to the successful prosecution or defence of his cause, where the same happens to be in the possession of persons not parties to the cause, and residing without the County in which the cause is pending; for remedy whereof—

286. Be it enacted, That from and after the passing of this act, when any deed, bond, note, or other writing, which it may be necessary to use as testimony in any cause which now is, or may be hereafter pending in any of the superior or inferior courts of this State, may be in the possession of any person not a party to said cause, and not resident within the county in which said cause is pending, the clerk of the court in which said cause is pending shall, upon the application of the party (or his attorney) desirous of procuring such testimony, issue a subpoena duces tecum, directed to the person having such deed, bond, note or other writing, in his possession, and requiring him to be and appear at the next term of said court, and to bring with him into said court, the paper desired to be used as testimony. Which said subpoena duces tecum shall be served thirty days before the court to which it is made returnable, by a sheriff, constable, or some private person. And the return of the sheriff, constable, of such service, or the affidavit of such private person, shall be sufficient evidence that the subpoena was duly served.

287. Sec. II. When a subpoena shall be issued and served in terms of the first section of this act, and the person whose attendance is thereby required shall fail to comply with the requisitions thereof, it shall be the duty of the court, on motion, to issue an attachment against such defaulting witness, returnable to the next term of said court, and shall fine such witness in a sum not exceeding three hundred dollars, unless he or she shall make a sufficient excuse for such failure, which shall be judged of by the court; but shall nevertheless be subject to the action of the person at whose suit such witness shall have been summoned, for any damage which he, she or they may have sustained by reason of such failure: Provided, nevertheless, that if the person so subpoenaed, shall within ten days after the service of such subpoena, deliver to the party at whose instance the subpoena was sued out, or his attorney, or file in the office of the clerk of the court from which such subpoena issued, the paper, the production of which is required by such subpoena; or shall deliver to the said party or his attorney; or shall file in the said office his affidavit, that the said paper is not

Papers in hands of third persons may be required to be produced in Court by

Subpoena Duces Tecum.

How served.

Person failing to attend, may be fined by the Court and sued by the party.

Witness may relieve himself from liability.
in his power, custody, possession or control, nor was it at the time of serving said subpoena, then and in that case, such delivery or filing of the paper so sought as aforesaid, or of such affidavit, shall be considered in full and complete compliance with the requisitions of such subpoena *duces tecum*.

288. Sec. III. In any case now pending, or which may hereafter be pending in the superior or inferior courts of this State, where any party shall pursue the course herein-before pointed out, but who is unable thereby to procure such written instrument, such party shall be permitted to go into parol evidence of the contents of such written instrument.

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

**STATE OF GEORGIA,**

_Houston County._

To Rufus Felder, of the County of Bibb—Greeting.

You are hereby commanded and required, that laying all other business aside, you be and appear at the Superior Court to be held in and for the County aforesaid, on the fourth Monday in October next. And bring with you and produce in said Court [here set out the paper in the Witness's possession, which the party desires to use on the trial, so that the witness may understand the object of the Writ.] Which Deed of Conveyance is in your possession, and which is intended to be used as evidence by the Plaintiff, in an action of Ejectment pending in said Court; in which action John Doe is Plaintiff and Richard Roe Defendant. Herein fail not.

Witness, the honorable Henry G. Lamar, Judge of said Court, this June 1, 1859.

William H. Miller, Clerk.

**Affidavit of the Witness.**

STATE OF GEORGIA, **(Houston County.)**

In person appeared before the undersigned, Rufus Felder, who after being sworn saith, in answer to a Subpoena *duces tecum, this day served on him, that he has not now, nor had he in his possession at the time of the service of said Subpoena, [here set out the paper,] nor is said Deed of Conveyance, in his power, custody, possession, or control, in any manner whatever.

Sworn to and subscribed,
before me, this June 1, 1859.

James Webb, J. P.

Rufus Felder.

An Act to compensate persons who may be compelled to attend the Superior Courts of this State, as Witnesses in behalf of the State; in Counties other than where such person or persons may reside.—Approved Dec. 30, 1836.

289. Sec. I. From and after the passage of this act, that any person or persons who may be compelled, by subpoena or recognizance, to attend any of the superior courts of this State, as a witness on the part of the State, in counties other than where such person or persons reside, shall receive for each day, while he or she may be in attendance on said court, the sum of two dollars; and the like sum of two dollars for every thirty miles he, she or they may travel, in going to and returning from said court. Which said several sums shall be taxed in the bill of cost and paid for out of the county funds, in such county as the case may be pending, as soon as such case may be disposed of by said court.
290. Sec. II. Any person or persons who may attend the superior courts as above directed, shall be entitled to such pay as is therein stipulated, whether there be a conviction of the defendant or not, upon his making affidavit (before some judge of the superior, or justice of the inferior court, or justice of the peace,) to the number of days which he or she has been in attendance on said court, and the number of miles he or she will travel, in coming to and returning from said court. Which said affidavit must be signed by the presiding judge and countersigned by the clerk of said court; and in that case it shall become a warrant on the county treasurer, or clerk of the inferior court of such county wherein the witness has been in attendance.

291. Sec. III. Nothing herein contained shall be so construed as to prevent the cost being collected in the same manner as heretofore pointed out by law, from any defendant or defendants in State cases.

292. Sec. IV. So much of said cost when collected, as has been paid out by the county treasurer, or the clerk of the inferior court, to witness or witnesses who may reside without the limits of such county, shall be paid over by the sheriff or clerk of the superior court, to such county treasurer or clerk of the inferior court as may have paid the same, and be applied to county purposes.

Affidavit of the Witness.

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County, } John Doe of the County of Jones, in said State,  
who being sworn saith, that he attended the Superior Court of said  
County of Houston, as a Witness on behalf of the State of Georgia, in  
the prosecution of Richard Roe for the crime of Murder, six days. And  
deponent further saith that he will have travelled, in coming to and  
returning from said Court, sixty miles.

Amount due, $16 00.
Sworn to and subscribed,  
before me, this April 25, 1859.  
James Mack, J. P.

John Doe.

Examined and approved—William H. Miller, Clerk.

An Act to remove all disabilities whatever from persons in this State from Testifying in any of the Courts thereof; or having their oath or affirmation, where the same is necessary to secure any right or interest whatever, by reason of any Religious Opinion he, she or they may entertain or express.—Approved Dec. 11, 1841.

293. Sec. I. Be it enacted, That from and immediately after the passage of this act, no person shall be excluded from testifying as a witness in any of the courts of law or equity in this State; or deprived of his, her or their oath or affirmation, touching any matter or thing where an oath or affirmation is necessary to secure any right or interest whatsoever, by reason of any religious opinion such person or persons may entertain or express: Provided, nothing in this act shall prohibit such disabilities going in evidence to the jury, to affect the credit of such witness or witnesses.

An Act for the case of Dissenting Protestants within this Province who may be scrupulous of taking an Oath, in respect to the manner and form of administering the same.—Approved Dec. 13, 1756.
Whereas, many inconveniences may arise in this Province, through the scruples of divers Protestant Dissenters within the same, of good estates and abilities, who refuse to take an oath by laying their hand on the Holy Evangelists, whereby the public is deprived of their services as Jurymen. And whereas, acts of toleration and indulgence to Protestant Dissenters have been found of beneficial tendency to other his Majesty's Provinces, and may in a particular manner, be so to this infant Province. In order that such dissenting Protestants may be enabled and compelled to serve on all Juries, and to give Evidence in all cases, and that the acts of such Protestant Dissenters may be valid and effectual, in respect of the manner and form of taking and administering oaths—

294. Be it enacted, that immediately after passing of this act, any person who shall appear in any of the courts of judicature, or before any judge or magistrate in this Province, either as juror, witness, party or otherwise, in any cause, civil or criminal, and shall make and distinctly repeat a solemn and conscientious declaration and affirmation (according to the form of his profession), in any matter, cause or thing, wherein an oath is required by law, in the following words: "I, A B, do swear in the presence of Almighty God, as I shall answer at the great and awful day of judgment, that, (as the case may be)—so help me God." And such solemn and conscientious declaration and affirmation shall be deemed, held, adjudged and taken to be valid and effectual, to all intents, constructions and purposes whatsoever, in the same manner as if such person had taken an oath on the holy evangelists of Almighty God. And that all and every such person and persons as shall be convicted of falsely and corruptly affirming and declaring any matter or thing, which (if the same had been an oath taken on the holy evangelists,) would by law amount to wilful and corrupt perjury, shall incur the same penalties, disabilities and forfeitures, as persons convicted of wilful perjury do incur by the laws of Great Britain.

An Act to alter and amend the XXIIId section of the Judiciary Law of this State, passed February 16, 1799.—Approved Dec. 16, 1811.

Whereas, the Judiciary Law of this State does not fully embrace the mode necessary to procure Testimony by Interrogatories, as justice in its fullest extent requires—

295. Be it enacted, &c., That after the passing of this act, it shall and may be lawful where any witness resides out of the State or out of the county, or where any witness resides within the same, and being a seaman, patron of a boat, stage-driver, mail-carrier, aged or infirm person, [see 301.] and in all other cases where the evidence of any witness cannot be duly obtained in which his or her testimony may be required in any case, it shall be lawful for either party, on giving at least ten days' notice to the adverse party, or his, her or their attorney, accompanied with a copy of the interrogatories intended to be exhibited, to obtain a commission from the clerk of the court in which the same may be required, directed to certain commissioners, to examine all and every such witness or witnesses, on such interrogatories as the parties may exhibit; and such examination shall be read on the trial, on the motion of either party. Any rule, order or law to the contrary notwithstanding.

An Act to carry into effect the Penal Code of this State, and the Penitentiary System founded thereon.—Approved Dec. 19, 1816.

296. Sec. XXI. of the rules.—Where any convict confined in the penitentiary, is a witness in any civil cause, depending in any court of this State, and his testimony required, the same shall be taken by commission, and read
at the trial of such civil cause. And in no civil case shall such convict be removed from the penitentiary to give personal attendance at court. But before such commission issues, the party, or his or her attorney, requiring such commission, shall file an affidavit, with the record of the proceedings, that the convict to be examined is a material witness in the case.

**Affidavit of the Party Applying for the Commission.**

STATE OF GEORGIA. In person appeared before the undersigned, 
Houston County. John Doe, who after being sworn saith, that he hath commenced his action of Assumpsit in the Superior Court of said County, against Richard Roe. That said action is now pending in said Court, and that Charles Smith, a convict in the Penitentiary, is a material witness for deponent in said action. And that deponent desires to take the Testimony of said Charles Smith by Commission, according to the statute in such case made and provided.

Sworn to and subscribed, before me, this May 1, 1859.
Simpson Moore, J. P.

John Doe.

An Act to regulate the mode of taking Testimony by Commission and de bene esse, within this State. And to alter and amend the several laws relating thereto.—Approved Dec. 29, 1823.

297. The act entitled "an act the more effectually to insure the testimony of witnesses going beyond seas, or removing without the jurisdiction of the State, and aged and infirm persons," passed the 8th day of December, 1806, be and the same is hereby re-enacted and declared to be operative and effectual, in all cases pending or which may be brought in the several courts of this State.—[See 301 for the act revived.]

298. Sec. II. In all cases which are or shall be pending in any of the courts of this State, when any one person is the only witness to any material fact in any case, it shall and may be lawful to examine such witness de bene esse, on complying with the provisions of the aforesaid act; in so far as the same are applicable to such case. And that the examination so taken shall be read in evidence in such cause, on the terms and under the restrictions specified in said act.

Sec. III. All laws and parts of laws militating against this act are hereby repealed.

An Act to point out and regulate the manner of taking the Testimony of Females, in certain cases.—Approved Dec. 19, 1829.

299. From and after the passage of this act, when the testimony of any female shall or may be required in any of the superior or inferior courts which may be held in this State, criminal cases only excepted, it shall and may be lawful for either party, on giving at least ten days' notice to the adverse party, or his, or 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.—[And see 301.]

300. Sec. II. If any person, as above-recited, shall refuse to appear before commissioners appointed to take her or their examination; or appearing, shall refuse to answer such legal interrogatories as shall be annexed to said commission, and exhibited to her or them, it shall be lawful for either

Witness refusing to appear or Answer.
of said commissioners, or the party upon whose application the said commission was issued, to proceed in conformity to the laws now in force, pointing out the mode of proceeding in cases of failure or refusal to attend or answer interrogatories, in other cases.—[See 302.]

Sec. III. All laws or parts of laws militating against the above-quoted act, are hereby repealed.

AN ACT to amend "an act to regulate the mode of taking Testimony by Commission and de bene esse, within this State. And to alter and amend the several laws relating thereto," approved 20th December, 1823.—Approved Dec. 28, 1838.

301. Sec. I. Be it enacted, That the act (for which this is amendatory) more effectually to insure the testimony of witnesses going beyond sea, and aged and infirm persons, passed on the 8th day of April, 1806, which had been repealed, and again re-enacted and declared to be operative and effective, in all cases pending or which may be brought in the several courts of this State, by act of 20th December, 1823, be amended so as to read as follows, to wit: That in case either plaintiff or defendant may deem any witness or witnesses, material in any cause or causes pending in any of the courts of law and equity of this State, and who are going beyond seas, removing without the county, or beyond the jurisdiction of the State, or whose official or other business, would require his absence from the county, at the term of trial of said cause, or from age or other bodily infirmity, may be unable to attend court, it shall and may be lawful to examine any such witness or witnesses under commission, or [or] serving and filing interrogatories, in the manner prescribed by law, in cases where witnesses reside out of the county: Provided, that in case the person or persons whose testimony shall have been taken, return or be able to attend, that then and in that case, such written testimony shall not be received or read.—[See 307.]

Sec. II. All laws, or parts, or amendments of laws militating against this amendatory act, be and the same are hereby repealed.

AN ACT to point out and regulate the manner of taking Testimony by Commissioners, in certain cases.—Approved Dec. 22, 1840.

302. Sec. I. Be it enacted, That when any witness shall fail, refuse or neglect, to appear before commissioners for the purpose of answering interrogatories appended to a commission issuing from any court in this State, in which court the case may be pending, for which said interrogatories are intended to be taken; upon the application of the commissioners therein named, it shall and may be lawful for the party at whose instance said interrogatories are to be taken, his, her or their attorney, or for either of the commissioners, to make affidavit of such failure, refusal or neglect. And upon application made to any judge of the superior, or justice of the inferior court, of any circuit or county in which said witness may be when applied to, to be examined, accompanied with such affidavit, [for such judge or justice,] to issue an order, to all and singular, the sheriffs, constables and coroners of this State, commanding them to bring said witness before him. And upon such judge or justice being satisfied of the legality of such interrogatories, it shall be the duty of such judge or justice to order the officer having said witness in custody, to deliver said witness to the jailer of such county, and to be said jailer confined in the common jail of said county, until he or she shall answer the interrogatories propounded to him or her, to said commission attached.

303. Sec. II. Nothing herein contained shall be so construed as to
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prevent the court from which said commission issued, from punishing said witness for contempt of said court. And that all laws and parts of
laws militating against this act, be and the same are hereby repealed.

Party's Affidavit.

STATE OF GEORGIA, } In person appeared before the undersigned,
Houston County. } John Doe, who after being sworn saith, that he
has commenced his action of Assumpsit in the Superior Court of the
County of Bibb, in said State, against Richard Roe, which action is now
pending in said Court. That a Commission with certain Interrogatories
thereunto annexed, issued from said Court, in conformity to law,
to take the Testimony of Charles Smith, of the County of Houston, a
material Witness in said case, on the part of deponent. That said
Commission has been presented to James West and John Jones as Com-
missioners. That said Commissioners have required the personal at-
tendance of said Charles Smith in order that his testimony might be
taken; but said Charles Smith, without any legal excuse, fails, (refuses
or neglects, as the case may be,) to appear before said Commissioners
for the purpose aforesaid.

Sworn to and subscribed, before me, this May 1, 1859.

James Mack, J. P.

} John Doe.

Order of the Judge.

CHAMBERS, May 1, 1859.

STATE OF GEORGIA, } To all and singular, the Sheriffs, Constables, and
Houston County. } Coroners of said State.

Whereas, I have been informed by the affidavit of John Doe, that he
has commenced his action of Assumpsit, in the Superior Court of the
County of Bibb against Richard Roe, which action is now pending in
said Court. That a Commission with certain Interrogatories thereunto
annexed, issued from said Superior Court of the County of Bibb, in con-
formity to law, to take the Testimony of Charles Smith, of the County
of Houston, a material Witness in said case, for the deponent. That
said Commission has been presented to James West and John Jones as Com-
missioners. That said Commissioners have required the personal
attendance of said Charles Smith, in order that his Testimony might be
taken, but that said Charles Smith, without legal excuse, fails to
appear before said Commissioners for the purpose aforesaid: you and
each of you are therefore, hereby commanded, to arrest the body of the
said Charles Smith and bring him before me at Perry in said County,
by ten o'clock of the forenoon of the second instant, that he may be dealt
with as the law directs. Herein fail not.

Given under my hand and official signature,

Henry G. Lamar, J. S. C. M. D.

An Act to make valid all Commissions which have heretofore been, or
may hereafter be issued in Blank, for the purpose of taking Testimony
in any case arising, or which may have arisen in the Courts of Law and
Equity of this State.—Approved Feb. 13, 1850.
304. Sec. I. Be it enacted, That from and after the passage of this act,
Commissions may issue in Blank.

all commissions which have heretofore been, or may hereafter be issued in blank, for the purpose of taking testimony, in any case pending, or arising in the courts of law and equity in this State, shall be valid and as effectual as if the names of the commissioners had been inserted by the officer issuing the same.

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

An Act to regulate the taking of Testimony by Interrogatories, for the Courts of this State. And to amend an act entitled “an act to authorize parties to compel Discoveries, at common law,” approved December 17th, 1847.—Approved Feb. 23, 1850.

305. Sec. I. Be it enacted, That in all cases in the superior and inferior courts of this State, where it may become necessary to take testimony by interrogatories as heretofore practised, commissions may issue in blank, in so far as relates to the names of the commissioners; but the names of witnesses intended to be examined, shall be distinctly specified in the notice served upon the adverse party, preparatory to issuing the commission.

306. Sec. II. When any person, either plaintiff or defendant, shall desire to file his, her or their written interrogatories, for the purpose of compelling the discovery contemplated by the act entitled “an act to authorize parties to compel discoveries at common law,” approved Dec. 17th, 1847, he, she or they shall be authorized to do so either in term-time or vacation of the superior or inferior court, and obtain an order from a judge of said court, requiring the adverse party to answer the same in writing, according to the provisions of the act of which this is amendatory.—[See 317.]

An Act to amend the act of eighteen hundred and thirty-eight, regulating the taking Testimony in certain cases.—Approved Jan. 5, 1852.

307. Sec. I. Be it enacted, That in addition to the cases already specified in the act assented to twenty-eighth of December, eighteen hundred and thirty-eight, the party plaintiff or defendant, where he has but a single witness to prove any particular point, or fact, in his case, may take his testimony by commission, exactly as in cases provided for by said act of eighteen hundred and thirty-eight, with the restrictions and limitations therein set forth.—[See next Act.]

An Act for the Perpetuation of Testimony in certain cases.—Approved March 5, 1856.

Whereas, the present mode of Perpetuating Testimony in suits which cannot be commenced, is both costly and difficult of application; for remedy whereof—

308. Sec. I. Be it enacted, &c., Whenever any person desiring to perpetuate testimony for a suit which cannot on any account, be commenced in any court of this State, shall make written application to any judge of the superior court of this State, stating the grounds of the application, the facts expected to be proved and by whom, said judge shall pass an order, endorsed on said application, requiring the clerk of the superior court of the county where the witness resides, to issue a commission directed to any attorney-at-law, [not interested,] in the usual form, to examine said witness upon the interrogatories filed by the applicant and the opposite party, should the latter file any. Which commission is not to issue however, until the applicant has given the opposite party five days' notice,
and served him with a copy of the interrogatories filed in the clerk’s office, as aforesaid. Which opposite party shall have the like privileges, if he desires, of filing cross-interrogatories, with said clerk. All of which direct and cross-interrogatories, if filed, are to be attached to the commission before delivery by the clerk to the party applying. But if the opposite party fails to file any cross-interrogatories, the applicant shall not be thereby delayed or deprived of the commission.

309. Sec. II. The said commissioner shall, after executing said commission in the usual manner, return it to the clerk of the superior court how returned. from whence the commission issued, in the mode now in use for returning commissions, who shall when he receives the same, after using the usual precautions and regulations, as to the correct delivery of the same, safely file the same away in a secure place, to be produced by him for publication whenever ordered so to do, by any proper tribunal.

310. Sec. III. The commissioner shall receive for his fee, before delivering up the papers, the sum of five dollars; and the clerk, before issuing the commission, shall receive the usual fee.

311. Sec. IV. The testimony so taken shall be of the same force and effect, and used in the same way, as if it had been taken under a bill in equity, filed for that purpose.

312. Sec. V. The clerk aforesaid, shall file away the written application and order, after entering the same on the minutes of the court, with the commission, when returned.

313. Sec. VI. In case the witness proposed to be examined, resides out of the State, then the commission shall be issued by the clerk of the superior court of that county where the party making the application shall reside.

Application of Party.

STATE OF GEORGIA, To the honorable Henry G. Lamar, Judge of the Houston County, Superior Courts of the Macon District.

The application of John Doe showeth, that Richard Roe, late of said County, did, in his lifetime, and just before his death, commit Trespass on the Real Property of Applicant, whereby an action has accrued to Applicant. That said Richard Roe departed this life on the first day of May, eighteen hundred and fifty-nine, and, therefore, Applicant cannot commence his action for the Trespass aforesaid. Applicant expects to prove by Charles Smith, of said county, that said Richard Roe entered upon Land of Applicant, to wit, lot of Land number forty-nine, in the tenth district of said County, on the twentieth day of April, eighteen hundred and fifty-nine, and cut down and removed away from said lot of Land, a large number, to wit, one hundred Trees, which Trees were of the value of two hundred dollars. Wherefore, Applicant prays your honor to issue an order directed to William H. Miller, Esq., Clerk of the Superior Court of said County, requiring him to issue a Commission to such Commissioner as your honor may appoint, that said Charles Smith may be examined upon Interrogatories filed by Applicant, in order that the Testimony of said Charles Smith may be perpetuated, according to the statute in such case made and provided. This May 10, 1859.

THOMAS FELDER, Appt’s Atty.
Order of the Judge.

STATE OF GEORGIA, } To William H. Miller, Clerk of the Superior Court
Bibb County. } of Houston County—Greeting.

Whereas, by the within application of John Doe, I am informed that the Applicant has a good cause of action against the estate of Richard Roe, deceased, late of said County, which action cannot, on any account, be commenced in any Court of this State. And, whereas, by said Application I am informed that Charles Smith is a material witness for the Applicant, to prove the facts necessary to support said action, when it can be instituted. You are, therefore, hereby directed to issue a Commission, directed to John M. Giles, Esq., Attorney-at-Law, authorizing him to examine said Charles Smith upon certain Interrogatories filed in your office by the Applicant. And after the examination of said Witness, said Commissioner is required to deposit the Packet in the Clerk’s office. And you, the said Clerk, will receive and safely keep said Packet, until you are required to produce it, according to law.

Given under my hand and official signature, at Chambers, this May 11, 1859.

HENRY G. LAMAR, J. S. C. M. D.

An Act for pointing out the method of Compelling persons residing in this State, to give Evidence in causes pending in another.—Approved Dec. 16, 1794.

Whereas, much inconvenience has arisen to individuals, from no compulsory process having been adopted in the different States, to oblige the citizens or residents thereof, to give evidence in suits pending in other States; for remedy whereof, as far as it might be occasioned by persons residing within the State of Georgia—

314. Sec. 1. Be it enacted, That if the testimony of any persons residing within the said State shall be required in any suit pending in any court of record in either of the United States, and he, she or they, shall refuse to appear before commissioners appointed to take his or her examination, under a commission properly issued and authenticated, agreeably to the laws and rules of the courts of the State from which it shall be sent; or appearing, shall refuse to answer to such legal interrogatories as shall be annexed to the said commission and exhibited to him, her or them, it shall be lawful for either of the said commissioners, or the party upon whose application the said commission was issued, to apply to any judge of the superior courts of this State, or justice of the inferior court of the county, within which such person whose testimony is required may reside, and upon producing before him such commission, and his being satisfied of its regularity, and on affidavit being made of such refusal, he shall issue a subpoena in the usual form, directed to such person or persons as aforesaid, requiring him, her or them, to be and appear before the said commissioners, at a certain time and place, to answer to such legal interrogatories as may be annexed to the said commission, and then exhibited to him: Provided, that he shall not be required to attend such examination and give answer to the said interrogatories, within less than two days after the service of the said subpoena, neither shall he be obliged to attend for such examination out of the county where he resides, nor more than ten miles from the place of his residence. And upon due service of the said subpoena upon such person or persons, the same shall be returned to the commissioners on or before the time appointed for the examination and the service.
of such subpoena, proven by the return of the proper officer. And on the refusal or neglect of such person or persons to comply with its mandate, indorsed on or annexed to the said subpoena, and returned to the superior or inferior court, as the case may require, of the county in which such person or persons reside, he, she or they, shall be subject for such neglect or refusal, to all the pains and penalties to which such person or persons would have been subject for a similar default in any cases pending in the courts of this State.

315. Sec. II. The person or persons whose evidence shall be required as aforesaid, shall if they or any of them shall require the same, be entitled to the same fees or pay, as persons summoned to give evidence in the superior or inferior courts of this State.—[And see next Act.]

An Act to extend the operation of the act passed on the 16th day of December, 1794, entitled "an act for pointing out the method of compelling persons residing in this State, to give evidence in causes pending in another."—Approved Dec. 21, 1839.

316. Sec. I. That all the provisions of the said recited act, be and the same are hereby extended to the cases of the persons who may refuse to appear before the commissioners and give evidence under commissions issued from any of the counties of this State.

Affidavit of the Party.

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } John Doe, who, after being duly sworn, saith, that he has commenced, in the Court of Common Pleas of the State of South Carolina, Chesterfield District, his action of Assumpsit against Richard Roe, and that said action is now pending in said Court. That Charles Smith, of the County and State first aforesaid, is a material Witness for deponent, in said action of Assumpsit. That a Commission to take Evidence (having certain Interrogatories thereunto annexed,) in legal and proper form, agreeably to the laws of South Carolina, issued in said case, to take the Testimony of said Charles Smith. That said Commission has been presented to John West and John Jones, Commissioners, who have required the personal attendance of said Charles Smith, in order that his Testimony might be taken; but that said Witness, without any legal excuse, refuses (or neglects, as the case may be,) to attend upon said Commissioners for the purpose aforesaid.

Sworn to and subscribed, before me, this May 1, 1859.  
John Ragin, J. C. O.  

Subpœna by the Judge.

STATE OF GEORGIA, } To Charles Smith, of the County of Houston.  
Bibb County. } You are hereby required, that laying all other business aside, you be and appear before John West and John Jones, Commissioners, by ten o'clock in the forenoon of the 12th instant, in the town of Perry, in said County of Houston, then and there to be sworn, and to make true and full Answers to certain Interrogatories, then and there to be exhibited to you. Evidence to be used in an action of Assumpsit pending in the Court of Common Pleas, of Chester-
An Act to authorize Parties to compel discoveries at Common Law.—Approved Dec. 17, 1847.

1847, or any such interrogatories are presented in vacation, and are allowed by such judge or justice, the said judge or justice shall make and grant an order, requiring the adverse party to answer the same in writing, in solemn form, on oath or affirmation. Which order, together with said interrogatories, shall be returned to the clerk of the court in which such action is pending, and shall be filed in his office. And the said order shall be as good and effectual to compel
the discovery sought for, as if the same had been granted in court. Any law, usage or custom, to the contrary notwithstanding.

319. Sec. II. When the plaintiff in any cause shall reside out of the county in which the action may be pending, a service of a copy of said interrogatories and order upon the attorney of the plaintiff, shall be sufficient service on such plaintiff.

320. Sec. III. The provisions of the act amended by this act, and of this act, shall be applicable to the court of Common Pleas of the city of Augusta, and the court of Common Pleas and Oyer and Terminer of the city of Savannah.

321. Sec. IV. Where it shall be made to appear to the court, that the time allowed for the answer to the interrogatories to come in, shall from any cause, not be sufficient, the court may allow such further time as the circumstances of the case may require.—[And see next Act.]

Order of the Judge, or Justice.

JOHN DOE

vs.

ASSUMPTIS in Houston Superior Court, returnable to the October Term, 1859.

RICHARD ROE

Whereas, it has been made to appear to me, by the oath of the Defendant, in the above cause, that he has filed in the Clerk's office of said Court, Interrogatories to be propounded to the Plaintiff. And it appearing to me that the Answers to said Interrogatories will be material Evidence on the trial of the cause; that the Interrogatories themselves are pertinent, and such as the Plaintiff would be bound to Answer upon a Bill of Discovery in a Court of Chancery. Therefore, it is hereby ordered, that the Plaintiff, above-named, be and he is hereby required and directed, to Answer said Interrogatories, so filed as aforesaid, fully, correctly and in solemn form, on his oath or affirmation, within sixty days from the date of this order.

Given under my hand and official signature, in Chambers, this August 10, 1859.

HENRY G. LAMAR, J. S. C. M. D.

An Act to amend an act passed the 17th of December, 1847, to authorize parties to compel discoveries at common law. Approved Feb. 20, 1854.

322. Sec. 1. Be it enacted, That from and after the passage of this act, the following shall be an additional section of said act, to wit: Any party, plaintiff or defendant, in any action at common law, pending in any superior, inferior or justices' courts of this State, wishing a discovery from, or on the evidence of the adverse party on the trial of such action, may apply to the clerk of said superior or inferior courts, or to the justices of the peace in whose courts said action may be pending, in case the party whose evidence is desired, resides in the county where said case is pending, for a subpoena, requiring said party to be and appear at said court and testify in said action, as other witnesses now by law are required to do. Which subpoena shall be personally served thirty days before the term of the court at which he is required to attend. And in case said party shall fail or refuse to be and appear, and testify in said action as required, then and in that case said cause shall be subject to the same continuances as are now allowed by law, for the absence or non-attendance of other witnesses; and after said continuances are exhausted, said action shall be dismissed. Provided, it be the plaintiff who refuses to appear and testify as aforesaid. Or, if the party who fails or refuses to be and appear as aforesaid, be the Non-resident Plaintiff how served. Extended to City Courts Time to answer allowed. Act of 1847 amended. Party may be subpoenaed Continuance allowed.
JUDICIARY.—TESTIMONY.

Party refusing to attend, suit or answer to be dismissed.

Defendant in said cause, his plea or pleas and answers, [answer,] if he has filed any, shall be stricken out and judgment given against him by default.

Or such other order may be taken and had in said cause, as in the discretion of said court may be just and proper. And in the event said parties, plaintiff or defendant, whose evidence or discovery may be required in any action pending in either of said courts, shall or may, either before, at the time or after the commencement of said action, and before the time of giving in said testimony, remove or do reside out of said county in which said action is pending, then and in that case interrogatories may be filed as is now usual for other witnesses under the same rules and regulations, as is now required by law. And in case of a refusal or failure to answer the same; or in case they are answered evasively, the same rule or order may and shall be had as herein-before provided in case of failure or refusal to attend and answer where said parties are subpoenaed to attend, in case they reside in said county.

323. Sec. II. That the testimony given in under the provisions of this act shall be taken down by order of the court, and made a matter of file in the clerk’s office.—[And see next Act.]

Sec. III. That all laws and parts of laws militating against this act, be and the same hereby repealed.

AN ACT to make certain persons therein mentioned competent Jurors and Witnesses. And to declare the law therein.—Approved Feb. 13, 1854.

324. Sec. 1. Be it enacted, That from and after the passage of this act, all inhabitants of counties of this State, who are competent jurors or witnesses in other case be declared and holden to be competent jurors or witnesses, in any case, in any court where such counties are parties to the suit, or interested therein in their capacity as corporations or quasi-corporations. Any practice, usage or custom, to the contrary notwithstanding.

AN ACT to amend an act passed the 17th day of December, 1847, to authorize Parties to compel Discoveries at Common Law. And for other purposes therein mentioned.—Approved Dec. 22, 1857.

325. Sec. I. From and after the passing of this act, it shall be lawful, in all cases that may be pending in law or equity, in this State, for plaintiffs and complainants, to examine defendants as witnesses; and for defendants to examine plaintiffs or complainants, as witnesses, under the same rules and regulations as are now prescribed by law, in relation to other witnesses.

326. Sec. II. Said parties shall be compelled to attend court as witnesses, upon being subpoenaed, in the same manner and within the same time, as is now required by law, in relation to other witnesses. And that the testimony of said parties may be taken by commission, under the same circumstances, and under the same rules and regulations, in the same manner, as is now prescribed by law, in relation to the taking the testimony of other witnesses by commission. And the testimony of said parties shall be entitled to such weight and consideration with the jury, as they, under all the circumstances, may see proper to give.

327. Sec. III. If the parties, as aforesaid, are present at the time of the trial of any case, they shall be compelled to testify, as provided in the first section of this act, although they may not have been served with a process of subpoena.

328. Sec. IV. If the parties aforesaid, or any of them, after having been subpoenaed, as aforesaid, shall fail to appear at court, according to the requisitions of said subpoena, or appearing shall refuse to testify, or
JUDICIARY.—TESTIMONY.

113 shall fail or refuse to appear and answer before commissioners, (when their testimony is required to be taken by commission,) then and in that case, said cause shall be subject to the same continuances as are allowed, by law, for the absence or non-attendance of other witnesses; and after said continuances are exhausted, said action shall be dismissed, provided it be the plaintiff who refuses to appear and testify, as aforesaid; or if the party who fails or refuses, to be and appear, as aforesaid, be the defendant in said cause, his plea, or pleas and answers, if he has filed any, shall be stricken out, and judgment given against him, by default, or such other order may be taken and had, in said cause, as in the discretion of said court, may be just and proper. And in the event said parties, plaintiff or defendant, whose evidence or discovery may be required in any action pending in either courts, by interrogatories, shall fail or refuse to answer the same, or in any case they are answered evasively, the same rule or order may and shall be had as herein-before provided, in case of failure or refusal to attend and answer, when said parties are subpoenaed.

329. Sec. V. Nothing in this act shall be construed so as to permit any party to be a witness for himself, on his own motion.

Sec. VI. All laws in conflict with this act, are hereby repealed.

An Act to amend an act, approved 19th December, 1829, to point out and regulate the manner of taking the Testimony of Females, in certain cases, so as to include Practising Physicians and School Teachers, in actual employment.—Approved, Dec. 11, 1858.

330. Sec. I. From and after the passage of this act, the provisions of the above-stated act, be so amended as to include practising physicians, and school teachers in actual employment in their vocation when the court sits.

INTERROGATORIES.

Commission.

STATE OF GEORGIA. By his honor Henry G. Lamar, one of the Judges of the Superior Courts of said State.

Houston County. To John Doe, Richard Roe and Charles Smith, Esqrs.—Greeting.

Whereas, there is a certain matter of controversy now pending in the Superior Court for said County, between Arthur Watson, Plaintiff, and Marcus Kunze, Defendant, in an action of Assumpsit. And whereas, Samuel Felder, is a material witness in said suit, and cannot attend our said Court, in person, without manifest inconvenience.

Now, know ye, that we reposing special trust and confidence in your prudence and fidelity, have appointed you, and you, or any two (or more) of you, are hereby authorized and required, to cause the said Samuel Felder, personally, to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the Interrogatories hereunto annexed. And the answers to the same being plainly and distinctly written, you are to send the same, closed up under your hands and seals, to our said Court, to be held on the fourth Monday in October next; together with this writ.

Witness, the honorable Henry G. Lamar, one of the Judges of said Court, this June 1, 1859.

JUDICIARY.—TESTIMONY.

Direct Interrogatories.

ARTHUR WATSON  
vs.  
MARCUS KUNZE.  
\{Assumpsit in Houston Superior Court.\}

Interrogatories to be exhibited to Samuel Felder, a material witness on
the part of the Plaintiff, and who resides out of the County of Houston.

Int. 1. Do you know the parties to the above suit?

Int. 2. Please state all you know, or have heard the Defendant say
about his owing the Plaintiff money. When was it? How much did
the Defendant say he owed the Plaintiff?

Int. 3. State fully and at large, all you know or have heard the
Defendant say, that will benefit the Plaintiff, as if particularly inter-
rogated thereto.

JOHN M. GILES, Plff's Atty.

Cross Interrogatories.

Int. 1. Did not the Defendant say, in the conversation of which you
testify, that he had paid the Plaintiff all he ever owed him?

Int. 2. Do you not know from what you have heard the Plaintiff
say, that the Defendant has paid him all the money he ever owed him?

Int. 3. State fully and at large, all you know or have heard the
Plaintiff say, that will benefit the Defendant, as if particularly inter-
rogated thereto.

JAMES A. PRINGLE, Def't's Atty.

Answers to Direct Interrogatories.

GEORGIA—BIBB COUNTY.

ARTHUR WATSON  
vs.  
MARCUS KUNZE.  
\{Assumpsit in Houston Superior Court.\}

By virtue of a Commission to us directed from the Superior Court of
Houston County, we have caused Samuel Felder, the witness in said
Commission named, to come before us; and said witness being duly
sworn, true answers to make to certain interrogatories to said Com-
mission annexed, deposed and answereth as follows, to wit—

To the 1st Direct Interrogatory he answers—I do.

To the 2d he answers—I was at Macon, in said County, on Satur-
day last, and had a conversation with the Defendant relative to a suit
instituted against him by the Plaintiff in the Superior Court of Houston
County, in which conversation he said, he owed the Plaintiff one hun-
dred dollars borrowed money.

To the 3d he answers—I know nothing more that will benefit the
Plaintiff.

Answers to the Cross-Interrogatories.

To the 1st Cross-Interrogatory he answers—If in the conversation
with the Defendant, (referred to in my answer to the 2d. Direct
Interrogatory,) he said he had paid the Plaintiff all he ever owed him,
I do not recollect it.

To the 2d he answers—I do not recollect having heard the Plaintiff
say, that the Defendant had paid him all he ever owed him.
To the 3d he answers—I know nothing more that will benefit the

Defendant.

Answered, subscribed and
sworn to before us this July 10, 1859.

Washington Poe, Com.
Thomas P. Stubbs, Com.

SAMUEL FELDER.

Directions how to have Interrogatories executed, etc.

1st. Fill up the blank left in the Commission with the names of the Commissioners, written out in full.

2d. There must be, at least, two Commissioners; they should be substantial respectable men.

3d. The Answers may be written on a separate sheet of paper if, as is generally the case, that which contains the Interrogatories is not sufficiently large, and attached to the Commission. The Answers must not be in the hand-writing of any of the parties, or of any Attorney engaged in the case; nor must they be previously written by any such person and transcribed.

4th. Direct the packet thus:

ARTHUR WATSON
vs.
MARCUS KUNZE,
Assumpsit in Houston Superior Court.

To the Clerk of the Superior Court,

Perry, Georgia.

5th. The Packet must be sealed up with as many seals as there are Commissioners; each Commissioner must write his name across one of the seals, or wafers, with which the Packet is sealed.

6th. The Packet may be forwarded by Mail; if that course be taken, the Commissioners, or one of them, must deliver it to the Post-Master, who must make the following entry upon it: "Received, Macon, Bibb County, Georgia, from the hands of Thomas P. Stubbs, Esq., one of the Commissioners, and to be forwarded by Mail, this July 20, 1859."

JAMES A. NESBIT, P. M.

7th. The Post-Master at the place to which the Packet is directed, must present it in open Court.

8th. The Packet may be returned by a private person; in this case, the person will have to swear, upon delivering the Packet in Court, "that he received it from the hands of the Commissioners, or one of them; that it has remained, unopened and unaltered in his possession, ever since." The same mode may be observed in Justices' Courts.

9th. When the packet is presented in Court and received, the Attorney should move the Court, for leave to open it, upon the granting of which Motion, the Clerk should make the following entry, on the envelope:—"Received on the usual oath of John Doe, with leave to open, this July 23, 1859."

WILLIAM H. MILLER, Clerk.

AN ACT supplementary to the Judiciary Act.—Approved Nov. 26, 1802.

331. The judges of the superior courts shall not, in any case whatever, withhold any grant, deed, or other document, from the jury, under which any party in a cause, may claim title, except such evidence of title as may be barred by the act of limitation.

AN ACT to legalize and make valid two Manuscript Books of the old Records of the Executive Department.—Approved Dec. 16, 1811.

332. From and after the passing of this act, the two manuscript books A and B, in the executive department, containing the records of said department from the year 1777 to the year 1784, inclusive, that have been transcribed, in pursuance of a resolution of the tenth day of December last past, be and the same are hereby legalized and made valid, and shall, henceforth, become a part of the records of said department.

AN ACT to legalize and make valid certain acts of Sheriffs and Clerks; and to regulate the admission of Evidence in the several Courts of Law and Equity in this State, so far as relates to certain papers.—Approved Dec. 15, 1810.
JUDICIARY.—TESTIMONY.

Whereas, considerable doubts have arisen in the Courts of this State, relative to the official returns of Sheriffs and Deputy-Sheriffs, whose Bonds and Oaths have not been entered on the Minutes of the Court before which such officers may have qualified. And whereas, doubts have also arisen in said Courts, as to the propriety of admitting Deeds to go as evidence before a Jury, which a Deputy-Clerk may have certified, as to the enrollment; for remedy whereof—

333. Sec. I. Be it enacted, That the official returns of all sheriffs and deputy-sheriffs, shall be and the same are hereby legalized and made valid, to all intents and purposes, as if made by a sheriff or deputy, who had been qualified according to law.

334. Sec. II. All deeds, mortgages, conveyances and other writings, enrolled by any deputy-clerk, in the proper court, and certified by him as such, the same shall be received and admitted as evidence, in any court of this State, in like manner as if the same had been recorded by the chief clerk.

335. Sec. III. All grants, copy-grants, testimonials, or any other document or paper, whatsoever, heretofore issued out of the Secretary of State's office, purporting to be signed by a deputy-secretary of State, shall be held and taken as legal: Provided, the said paper shall be ascertained to be genuine: Provided, nothing contained in this act, shall be so construed as to admit any grant obtained on the south side of the Oconee and Appalachie rivers, previous to the late land lotteries, as evidence in any court within this State.

336. Sec. IV. In all cases brought by any indorsee or indorsees, assignee or assignees, on any bill, bond or note, before any court of law and equity in this State, the assignment or indorsement, without regard to the form thereof, shall be sufficient evidence of the transfer thereof. And the said bond, bill or note, shall be admitted as evidence, without the necessity of proving the hand-writing of the assignor or assigns, indorser or indorsers. Any law, usage or custom, to the contrary notwithstanding.

An Act declaring certified copies of Official Bonds, Testimony in certain cases.—Approved Dec. 20, 1823.

337. In all causes now pending, or which may hereafter be instituted, in any of the courts of law or equity in this State, against the principal and securities, or either of them, on any official bond, given by any executor, administrator or guardian, or any other public officer of this State, it shall be lawful for the said courts to receive as evidence of the fact of the due execution of such bond, a certified copy thereof, made by the proper officer where such bond is of file or recorded; which copy shall be sufficient testimony in the cause, unless the same shall be denied on oath.

An Act to amend an act entitled “an act to regulate the Admission of Evidence, in certain cases, in the several Courts of Law and Equity in this State; and to provide for the Recording of Conveyances of Personal Property.”—Approved Dec. 21, 1830.

338. The certificate of any public officer, under his hand and seal of office, if one is attached thereto, either of this State or any county thereof, in relation to any matter or thing pertaining to their respective offices; or which, by presumption of law, properly pertains thereto, shall be admitted as evidence before any court of law or equity in this State: Provided nevertheless, that nothing in this act contained, shall be so construed as to prevent any court to require the production of the original, to which said certificate may appertain, or that it may be accounted for.
All laws and parts of laws, militating against this act, are hereby repealed.

An Act amendatory of an act assented to the 21st Dec., 1820, [1822.] authorizing the Certificates and acts of Notaries Public, to be received in Evidence, in certain cases.—Approved Dec. 26, 1836.

339. Sec. 1. From and after the passage of this act, the certificates, protests and other acts of notaries public, under the hand and seal of such notary, in relation to the non-acceptance of any bill-of-exchange, draft or other order, made for the payment of money or other thing; and also, in relation to the non-payment of any bill-of-exchange, draft, order, bond or note, for the payment of money or other thing, shall be deemed and received by the several courts of law and equity in this State, as sufficient prima facie or presumptive evidence of the facts therein stated, without any other or further proof: Provided always, that nothing in this act shall prevent either party, plaintiff or defendant, from having the benefit of the testimony of such notary, should they deem it necessary: And provided also, that the party relying on such notarial act, shall at the first term, file in the court, either a copy or the original of such protest or other acts: And provided further, that whenever a plaintiff, relying upon such notarial act, shall fail to file the same, as is herein provided, the court may grant such further time as it shall deem to be reasonable, in which it must be filed, in order to be operative as evidence.—[This act supersedes that of 1822.]

Sec. II. [Repeals all conflicting acts.]

An Act to regulate the admission of Oral Evidence, in reference to Written Instruments in certain cases.—Approved Dec. 25, 1837.

Whereas, it is now the practice, in some of the Circuits of this State, to admit Oral Evidence to prove that Deeds and Bills of Sales, absolute upon their face, were intended as Mortgages or securities for the payment of money, or other thing only, without any charge of fraud in obtaining them. And whereas, such practice may lead to serious injuries to the rights of the good people of this State, over their property, and may present strong inducements to the commission of frauds and perjuries; for remedy whereof—

340. Sec. 1. Be it enacted, That from and immediately after the passing Oral Evidence of this act, oral evidence shall not be received in any courts in this State, to show that a deed or bill of sale, absolute upon its face, made after the passing of this act, was intended as a mortgage or security for the payment of money or other thing, unless there is a charge of fraud in obtaining the same, in admissible to which case, oral evidence, going to show the fraud only, may be received. Any law, usage, custom or practice, to the contrary notwithstanding.

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

An Act to declare the force and effect of certain Contracts and Instruments in Writing, therein specified.—Approved Dec. 29, 1838.

Whereas, a diversity of decisions have prevailed in the several courts of this State, in regard to the force and effect of certain Written Contracts and Instruments in Writing, hereafter mentioned; for remedy whereof, and for the purpose of securing uniformity of Decisions, hereafter to be made, in the several courts of law and equity in this State, respecting such Instruments.—

341. Sec. 1. Be it enacted, That from and immediately after the passing of this act, whenever any written contract, or other instrument in writing, shall be produced in evidence, or for any other legal purpose whatever, before any court of law or equity in this State, during the progress of any bill or
suit whatever, pending in any of the said courts, and such written contracts or instrument in writing shall have a scroll, or other representation of a seal, annexed thereto, instead of a seal composed of a wafer or wax, or other tenacious substance; and also, whenever it shall be shown by words expressed in the body or conclusion of said written contract or other instrument in writing, that it was the intention of the party or parties subscribing the same, to become bound by or to execute a writing obligatory, or sealed instrument, though no scroll or seal has been annexed to said written contract or other instrument, shall be held, taken and construed by said courts, both at law and in equity, to have all the force, effect and dignity of writings obligatory, or instruments under seal:  Provided, that the provisions of this act shall not extend to any instruments heretofore executed.

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

An Act to be entitled an act to authorize the recovery, by law, of Open Accounts in favor of certain classes of persons therein named, upon the same proofs which is now allowed by the laws of this State, in favor of Tradesmen and Merchants.—Approved Dec. 23, 1843. 342. Sec. I. That from and after the passage of this act, physicians, blacksmiths, and all other persons in the practice of any regular craft, shall be allowed to sue for and recover judgment in the several courts of law in this State, on open accounts, in their favor, upon the production and proof of their books of account, in the same manner and on the same terms as is now authorized by existing laws, in cases where tradesmen and merchants are parties plaintiffs in said courts.

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

An Act to admit Tax-Collectors' Deeds in Evidence, in certain cases therein named.—Approved Dec. 23, 1840. 343. Sec. I. That from and after the passage of this act, when any party to a suit in any of the courts of this State, shall desire to offer in evidence, in any suit, a tax-collector's deed, and shall make oath that the tax-collector who executed the same, is dead, or has removed to parts unknown, it shall be the duty of such court, to admit the said deed, as evidence of the facts therein set forth and contained, without further proof:  Provided, the same has been duly recorded.

Sec. II. [Repealing section.]


Sec. I. The acts of the Legislatures of the several States, shall be authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the Courts of any State, shall be proved or admitted in any other Court, within the United States, by the attestation of the Clerk, and the Seal of the Court annexed, if there be a Seal, together with a Certificate of the Judge, Chief-Justice, or presiding Magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every Court within the United States, as they have by law or usage, in the Courts of the State from whence the said records are or shall be taken.—Act of May 26, 1790.
Clerk of the Inferior Court's Certificate.

STATE OF GEORGIA, } I, John H. King, Clerk of the Inferior Court
Houston County. } of said County, do hereby certify, that the above
and foregoing contains a true and exact statement of the proceedings
in the case of John Doe against Richard Roe, in an action of Assumpsit,
in said Court, between the parties, as appears from the records of said
Court.

Given under my hand and seal of office, this May 1, 1859.

John H. King, Clerk, [L. S.]

Justice of the Inferior Court's Certificate.

STATE OF GEORGIA, } I, John D. Winn, one of the Justices of the
Houston County. } Inferior Court of said County, (which Court is a
Court of Record,) do hereby certify, that John H. King, whose name
appears to the foregoing Certificate, was at the time of making said
Certificate, Clerk of the said Inferior Court of said County, and by
law, entrusted with the Records pertaining to said Court. That his
Certificate is in due form of law, and that the signature, purporting
to be his, is genuine.

Given under my official signature this May 1, 1859.

John D. Winn, J. I. C.

Sec. I. From and after the passage of this act, all Records and Ex-
emplifications of Office-Books, which are or may be kept in any public
Office of any State, (not appertaining to a Court,) shall be proved or ad-
mitted in any other Court or Office, in any other State, by the attestation
of the keeper of said Records or Books, and the seal of his Office there-
unto annexed, if there be a seal, together with a certificate of the presid-
ing Justice of the Court, of the County or District, as the case may be,
in which such Office is or may be kept, or of the Governor, the Secretary
of State, the Chancellor, or the Keeper of the Great Seal of the State,
that the said attestation is in due form, and by the proper officer. And
the said Certificate, if given by the presiding Justice of a Court, shall be
further authenticated by the Clerk or Prothonotary of said Court, who
shall certify, under his hand and seal of Office, that the said presiding
Justice is duly commissioned and qualified. Or if the said Certificate be
given by the Governor, the Secretary of State, the Chancellor, or Keeper
of the Great Seal, it shall be under the Great Seal of the State in which
the said Certificate is made. And the same Records and Exemplifications,
authenticated as aforesaid, shall have such faith and credit given to them,
in every Court and Office within the United States, as they may have by
law or usage, in the Courts or Offices of the State from whence the same
are or shall be taken.

Sec. II. [Extends the provisions of both acts to "the Territories and
Countries subject to the jurisdiction of the United States."—Act of
March 27, 1804.]

Clerk's Certificate.

STATE OF GEORGIA, } I, William H. Miller, Clerk of the Superior
Houston County. } Court, (and by virtue of my Office, keeper of the
Conveyancing Records, which Records do not appertain to a Court,) do
JUDICIARY.—TESTIMONY.

hereby Certify, that the foregoing three sheets, contain a full and true Exemplification, taken from the Records, relating [here give a statement of the paper,] as the same appears of entry in said Records, in my Office.

Given under my hand and seal of Office, this May 1, 1859.

Judge's Certificate.

STATE OF GEORGIA.  I, Henry G. Lamar, one of the Judges of the
Bibb County. Superior Courts of said State, presiding in the
County of Houston, do hereby Certify, that William H. Miller, whose
name appears to the foregoing Certificate, was on the day and date
thereof, Clerk of the Superior Court and Keeper of the Conveyancing
Records of said County of Houston, as he is represented to be in said
Certificate. That the said Certificate is in due form of law and by
the proper officer. And that the above signature, purporting to be
his, is genuine.

Given under my hand and official signature, this May 1, 1859.
HENRY G. LAMAR, J. S. C. M. C.

Testimonial by the Governor.

STATE OF GEORGIA.

By his Excellency, Joseph E. Brown, Governor and Commander-in-
Chief of the Army and Navy of said State.

To all whom these presents shall come—Greeting:

Know ye, that Henry G. Lamar, whose signature appears to his
Certificate, on the Instrument of Writing hereunto annexed, was at
the time of signing said Instrument, one of the Judges of the Superior
Courts of said State, presiding in the Superior Courts of the Macon
Circuit; and that his attestation is in due form of law; therefore, all
due faith, credit and authority is and ought to be had and given to
his Proceedings and Certificates, as such.

In witness whereof, I have hereunto set my hand and caused to be
affixed the seal of the State, in Milledgeville, the fifth day of May,
eighteen hundred and fifty-nine, and the eighty-third year of American
Independence.

By the Governor—          JOSEPH E. BROWN.
[Seal.]          James H. Watkins, Secretary of State.

Note.—If the Exemplification, &c., sought to be had, relates to Records and Judicial
proceedings, the Certificates of the Clerk and Judge, are sufficient without the Testi-
ominal of the Governor; but if the Exemplification, &c., relates to Records and Exem-
plifications of Office-Books, which are or may be kept in any Public Office, of any State,
not appertaining to a Court, then the Testimonial of the Governor, must be added. It is
safest, perhaps, in all cases, to have the Testimonial of the Governor.

An Act to authorize the admission, in evidence, of Certified Copies from
the Executive Department and other Offices connected therewith, to be
used as Evidence in any Court of Law or Equity, in this State, &c.—
Approved March 1, 1856.

Certified Copies from Executive Department or any of the offices connected therewith, that are im-
portant or necessary in any of the civil or criminal courts of this State, shall be conceded in evidence, in lieu of the original, in any court of law or equity in this State.

Sec. II. [Repeals all conflicting laws.]

VERDICT, JUDGMENT, APPEAL.

345. 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 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 judgment shall be entered, may enter good and sufficient security, either in open court or in the clerk's office, within the time aforesaid, for the payment of the judgment and costs, within sixty days; and if such party shall not pay the same agreeably thereto, execution may issue against such party and the security, without 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, [see 349.] 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, whom shall not be liable to give such security. But if, on hearing such appeal, it shall appear to the jury that the appeal was frivolous and intended for delay only, they shall assess damage to the party aggrieved by such delay, not exceeding twenty-five per centum on the principal sum which they shall find due. And such damages as shall be so assessed, shall be specially noted in the verdicts of such jurors; and no person shall be allowed to withdraw an appeal after it shall be entered but by the consent of the parties. And in case of a jury committing a contempt, or breaking up before giving in their verdict, in any civil case, the court may declare the same a mis-trial, and shall fine each of the offending juror or jurors in a sum not 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.

346. 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 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.
Interest not to be allowed as damages.

347. 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.

An Act to cause all Appeals from the Courts of Ordinary of this State, to be tried and determined by a Special Jury of the County where the case may happen; touching the Probate of Wills and granting Letters of Administration, in which matters of fact are involved, instead of a Decision being had thereon by the Court only.—Approved Dec. 19, 1823.

Whereas, it has heretofore been the practice in some of the Judicial Circuits of this State, for the Judges of the Superior Courts to hear and determine Appeals from the Courts of Ordinary of this State, touching the Probate of Wills and granting Letters of Administration, in which matters of fact were involved. And it being the policy of this government to retain the trial by jury in all cases in which matters of fact are involved—

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

An Act to explain and amend the Judiciary Act of 1799, so far as concerns the granting of Appeals in certain cases.—Approved Dec. 23, 1839.

Whereas, a contrariety of opinion exists among the judges of this State, and a different practice prevails in the different judicial circuits thereof, touching the granting of appeals under certain circumstances; for remedy whereof—

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

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

351. Sec. III. In case any such security or securities shall be compelled to pay off the debt or damages for which judgment may be entered, in any cause, he, she or they shall have recourse only against the party or parties for whom he, she or they, became security or securities.

Sec. IV. [Repealing section.]

An Act to authorize parties to enter an Appeal, in certain cases therein mentioned.—Approved Dec. 27, 1843.

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

353, Sec. II. Whenever an appeal shall be entered under this act, it shall not be necessary to revive suit under scire facias; but suit shall be revived by the party giving notice to the adverse party within thirty days from the time of appeal. And whenever a defendant shall appeal, said cause shall stand for trial on the appeal-docket, at the first court after twelve months shall have expired after such executor or administrator shall have been qualified.

Notice by the Representative.

JOHN DOE vs. RICHARD ROE. Assumpsit in Houston Superior Court and Verdict for the Plaintiff, at April Term, 1859.

The defendant having departed this life after verdict in the above cause and within the time allowed for appealing, without entering an appeal, the Plaintiff is hereby notified that the undersigned did enter an appeal in said case on the twentieth day of April, eighteen hundred and fifty-nine; (within four days after his qualification as Executor,) in conformity with the statute in such case made and provided. This May 1, 1859.

CHARLES SMITH, Ex'r of R. R. dec.

Stay Bond.

JOHN DOE vs. RICHARD ROE. Verdict for the Plaintiff for five hundred dollars principal debt; thirty dollars interest, and fifteen dollars costs of suit.

The Defendant in the above-stated case comes forward and demands a Stay of Execution, according to the statute in such case made and provided, and brings Charles Smith and tenders him as his Security; and they, the said Richard Roe and Charles Smith, acknowledge themselves, jointly and severally, bound unto John Doe, the Plaintiff, for the payment of the said verdict and costs, in said cause.

In testimony whereof the said Richard Roe and Charles Smith, have hereunto set their hands and affixed their seals, this May 1, 1859.

Approved—

William H. Miller, Clerk.

RICHARD ROE, [L. S.]

CHARLES SMITH, [L. S.]

Appeal Bond.

JOHN DOE vs. RICHARD ROE. Verdict for the Plaintiff for five hundred dollars principal debt; thirty dollars interest, and fifteen dollars costs of suit.

The Defendant being dissatisfied with the Verdict of the Jury rendered in the above cause, and having paid all costs, and demanded an Appeal, according to the statute in such case made and provided, brings Charles Smith and tenders him as his Security; and they, the said Richard Roe and Charles Smith, acknowledge themselves, jointly and severally, bound unto John Doe, the Plaintiff, for the payment of the eventual condemnation money in said cause, and all future costs.

In testimony whereof the said Richard Roe and Charles Smith, have hereunto set their hands and affixed their seals, this May 1, 1859.

Approved—

William H. Miller, Clerk.

RICHARD ROE, [L. S.]

CHARLES SMITH, [L. S.]
An Act to enable parties, Plaintiffs or Defendants, in any court of this State, to Appeal without paying costs and giving security, as now required by law, on certain conditions herein mentioned. And also to enable parties in Justice's Courts in this State, to obtain Certioraries without paying costs and giving security, on certain conditions herein mentioned.—Approved Dec. 27, 1842.

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

355. Sec. II. In all cases hereinafter determined in any of the justices, courts of this State, on the appeal, and the party cast shall be dissatisfied with the decision, if such party will make an affidavit in writing, that he or she is advised and believes that he or she has good cause for certioraring the same to the superior court, and that owing to his or her poverty, he or she is unable to pay the cost and give security as required by law, such affidavit shall in every respect, answer instead of the certificate of the presiding justice, that the cost has been paid and security given, as now required by law. And the judges of the superior courts respectively, shall grant writs of certiorari on the production of such affidavits, if sufficient cause be shown in the petition and affidavit. Any law, usage or custom, to the contrary notwithstanding.

Affidavit of the Party.

GEORGIA—HOUSTON COUNTY.

JOHN DOE vs. RICHARD ROE.

Assumpsit in the Superior Court, and Verdict for the
Plaintiff.

The Defendant in the above-stated case being dissatisfied with the Verdict rendered by the Jury, desires an appeal, and being sworn, says, that he is advised and believes that he has good cause of Appeal, but that owing to his poverty, he is unable to pay the costs and give security, as required by law.

Sworn to and subscribed, before me, this May 1, 1859.

William H. Miller, Clerk.

RICHARD ROE.

An Act to define the liability of Securities on Appeal, on Stay of Execution, and for protection of Bail on Recognizance, Bond, Note or other Contract.—Approved Dec. 20, 1826.

356. In all cases where any person or persons hath heretofore entered himself as security on appeal, or for stay of execution, in any case in any court in this State, and may subsequently thereto have paid off and discharged the execution issuing in such case, it shall and may be lawful for such security to apply to the sheriff, clerk, constable, marshal or attorney to whom such payment may be made, and procure an entry or certificate to be made on such execution that the same was paid by the security, and
such security shall thereupon be entitled to the use and control of such execution for the purpose of proceeding against his principal.—[See 358.]

357. Sec. II. In all cases of appeal where security hath been given, and hereafter given, and hereafter to be tried, it shall and may be lawful for the plaintiff or his attorney, to enter up judgment against the principal and the security, jointly or severally, and execution shall issue accordingly, and proceed against either or both, at the option of the plaintiff, until he is satisfied: Provided nevertheless, if the execution against the security or securities be first paid by him or them, then the execution against the principal shall still be of force and under the control of the security or securities, until the same be satisfied by said principal.

358. Sec. III. Where security shall have been given, or may hereafter be given for the stay of an execution after judgment, execution shall issue as in cases of appeal against the principal and security, jointly or severally, and proceed and be controlled in like manner.

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

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

361. Sec. VI. When any security to any note, bond or obligation, shall subscribe himself as security, such statement appended to his name on the said note, bond or obligation, shall be held and taken as good evidence of his being security, and the plaintiff shall sue out original and mesne process against him accordingly.—[See 364.]

**Special Defence by Security.**

And now at this term comes Charles Smith, by his attorney, James A. Pringle, and for matter of Special Defence, says that he signed the Note, the subject-matter of the Plaintiff's demand as security only, although he omitted to insert the word security to his name at the time of signing said Note. And said Defendant avers that he is no way, (nor was he at the time of signing said Note,) interested in the consideration thereof. Wherefore, Defendant prays that the Judgment and Execution rendered in said case, may recognize him as Security. And this Defendant is ready to verify, etc. This May 1, 1859.

James A. Pringle, Att'y pro Charles Smith.
Endorsers put on the same footing of Securities; notice to Endorsers unnecessary.

BankNotes excepted.

Security may require collection.

Endorsers.—

An Act to define the liability of Endorsers of Promissory Notes and other Instruments, and to place them upon the same footing with Securities.—Approved Dec. 26, 1826.

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

363. Sec. II. Any security or endorser may, whenever he thinks proper, after the note or instrument becomes due, require the holder to proceed to collect the same; and if he should not proceed to do so within three months, the endorser or security shall be no longer liable.—[See 366.]

An Act to alter and amend an act, entitled an act "to define the liability of Securities on Appeal, on Stay of Execution, and for the protection of Bail on Recognizance, Bond, Note, or other contract.—Approved Dec. 26, 1831.

Whereas, doubts exist whether the security or securities, against whom judgment has been rendered and execution has issued accordingly, upon any contract, bond or note, since the passage of the above-recited act, can have legally, the control of the execution, where the same has been paid off by such security or securities, (and they have neglected to make special defence at the trial,) to indemnify themselves out of the property of the principal; for remedy whereof—

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

365. Where any security or securities as aforesaid, shall fail at the trial of the note, bond or other instrument, upon which he, she or they were security or securities, to make special defence thereof, it shall be lawful for such security or securities to take control after payment thereof, of the said bonâ fide, after complying with the requisitions of the first section of this act. And that all laws and parts of laws, militating against this act, be and the same are hereby repealed.
An Act declaring and making certain the law defining the liability of Endorsers and Securities to Promissory Notes and other Instruments, when the holder thereof shall fail to proceed to collect the same after notice.—Approved Dec. 26, 1831.

Whereas, the legislature of this State, did on the twenty-sixth of December, 1826, pass an act, entitled "an act to define the liability of endorsers of promissory notes and other instruments, and to place them upon the same footing with securities;" by the second section of which act, it is provided, that "any security or endorser may, whenever he thinks proper, after the note or instrument becomes due, require the holder to proceed to collect the same; and if he should not proceed to do so within three months, the endorser or security shall be no longer liable." And whereas, the constitutionality of said second section is doubted, by reason of its departure from the title of said bill; for remedy whereof—

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

An Act to provide a remedy for Endorsers against all prior Endorsers and the Makers of Promissory Notes and other Contracts, in certain cases therein mentioned.—Approved Dec. 21, 1839.

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

Sec. II. [Repealing section.]

An Act to prescribe the mode of signing Judgment and issuing Execution against Endorsers in certain cases.—Approved Dec. 27, 1845.

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

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

Whereupon, it is ordered, considered and adjudged by the Court here, that the Plaintiff do recover of and from the Defendant, the first Endorser on a Promissory Note, made and executed by Charles Smith to Robert West, on the first day of May, eighteen hundred and fifty-seven, for the sum of five hundred dollars, and due ten days after date, the sum of five hundred dollars for his principal debt, etc.

An Act to point out a regular and definite Rule for the priority of Judgments obtained in the several Courts of this State.—Approved Dec. 13, 1810.

369. Sec. I. From and after the passing of this act, all judgments obtained in the superior, inferior or justices’ courts of this State, shall be entitled to the right or claim of any money received by the sheriffs, coroners or constables, agreeably to the date of such judgment or judgments. And that all the property belonging to the defendant or defendants, shall be bound and subject to the discharge of the first judgment or judgments, obtained in either of the aforesaid courts; [see 371:] Provided, the demand of such right is made before any of the aforesaid officers have paid the money over to the plaintiff in interest. Any law, usage or custom to the contrary notwithstanding.

Notice to Officers.

STATE OF GEORGIA,} To Madison Marshall, Sheriff of said County.

Houston County.

You are hereby notified that I claim and demand so much of the money in your hands, arising from the Sale of the property of John Doe as will satisfy a fi. fa. in my favor against said John Doe, from the Justices’ Court of the (619th) District G. M. of said County, herewith handed to you. This May 1, 1839.

RICHARD ROE, Plff in Fi. Fa.

An Act explanatory of the several Judiciary Laws of this State.—Approved Dec. 7, 1812.

370. No part of the judiciary laws of this State shall be so construed as to require the renewal of any judgment as heretofore practised, or in any other manner whatever.—[See 373.]

An Act to amend the 26th section of the Judiciary Act, passed 16th day of December, 1799. And also to prevent a fraudulent enforcement of Dormant Judgments.—Approved Dec. 19, 1822.

A contrariety of decisions having taken place in the different circuits of this State, as to the time when the property of the party against whom a judgment is entered shall be bound. And dormant judgments, by being collusively kept open, or made the instruments of fraud on innocent purchasers, and often operate oppressively on vigilant and bona fide creditors—

371. Be it enacted, That from and after the passing of this act, all property of the party against whom a verdict shall be entered and a judgment signed thereon, in conformity to the provisions of the twenty-sixth section of said act of 1799, shall be bound from the signing of the first judgment, in cases where no appeal is entered; but in cases where an appeal is entered, from the first verdict. The property of the party against whom the verdict is rendered shall [not] be bound except from the signing of the judgment on the appeal, except so far as to prevent the alienation by the party of his, her
JUDICIARY.—VERDICT, JUDGMENT, APPEAL.

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or their property between the signing of the first judgment and the signing of the judgment on the appeal.

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

An Act to be entitled an act to amend the third section of an act passed 19th day of December, 1822, entitled “an act to amend the twenty-sixth section of the Judicature Act, passed the 16th day of December, 1799.” And also, to prevent a fraudulent enforcement of Dormant Judgments.—Approved Dec. 22, 1823.

373. All judgments that have been obtained since the said 19th day of December, 1822; and all judgments that may be hereafter rendered in any of the courts of this State, on which no execution shall be sued out; or which executions, if sued out, no return shall be made by the proper officer for executing and returning the same, within seven years from the date of the judgment, shall be void and of no effect.—[See 8th sec. stat. Lim.]

374. Sec. II. When any judgment or execution has been declared void and of no effect by the construction given by any of the courts to the said third section of said act, the said judgment and execution so declared void and of no effect, shall and is hereby declared to be in as full force and effect as though the said act had not been passed.

Sec. III. The said third section of the act passed on the said 19th day of December, 1822, is hereby repealed.

An Act to authorize the assignment and transfer of judgments and executions.

And to make certain and uniform the practice with regard to the same.—Approved Dec. 22, 1829.

375. From and after the passage of this act, it shall and may be lawful for the plaintiff in any judgment or execution, to sell or transfer the same by written assignment or control; and said sale or assignment shall not be considered a discharge or satisfaction of said execution, but the assignee may proceed to collect the same for his own use and benefit, in as full and ample a manner as the plaintiff could have done if no such transfer or assignment had been made.

376. Sec. II. Nothing in this act contained shall be construed as to authorize Not if paid off the collection of any execution which may have been paid off by the defendant by Defendant or his agent, and kept open for the purpose of defrauding other creditors.

Transfer of Execution.

For value received, I hereby transfer and assign to Charles Smith, this writ of Feri Facias against Richard Roe, and the judgment upon which it is founded, without recourse on me; this May 1, 1859.

JOHN DOE, Plaintiff.

An Act to prevent personal property, which is the subject of an action of Trespass or Trover, from vesting in the Defendant or Defendants to such action, by virtue of a recovery and judgment by the Plaintiff, except so far as to be subject to be sold under the execution which shall or may issue upon such judgment of the said plaintiff, obtained by him in the said action of Trespass or Trover. And to make such property first liable to the payment of the Damages recovered in said action.—Approved Nov. 25, 1830.
377. From and immediately after the passing of this act, when a verdict for damages shall be found or rendered, in favor of a plaintiff in trover or trespass, and a judgment shall be signed thereon, the said verdict and judgment shall not have the effect to change the property which is the subject-matter of the said suit or action, or to vest the same, or any part thereof, in the defendant or defendants to the said suit or action of trespass or trover, until after the damages and costs recovered by the plaintiff in such action, are paid off and discharged, except so far as to subject the said property to be sold under and by virtue of an execution issuing on said judgment in said action of trespass or trover, and to make the same liable to the payment of the damages and cost recovered in said action.

Former Judgment no lien, etc. 378. Sec. II. No judgment obtained against the said defendant to such suit or action of trespass or trover, prior in point of time to the said judgment so obtained by the said plaintiff in such action of trespass or trover, shall have any lien or binding force on said property which is the subject-matter of such action of trespass or trover, until after the damages and costs recovered by such verdict and judgment of the plaintiff in such action of trespass or trover, are first paid off and discharged.

Sec. III. All laws and parts of laws which militate against this act, are hereby repealed.

An Act directory of the mode of entering up Judgment on Official or Voluntary Bonds.—Approved Dec. 30, 1847.

379. Sec. I. Be it enacted, That from henceforth all judgments rendered against the obligor or obligors of any bond, whether official or voluntary bonds, shall be for the amount of damnification found by the verdict of the jury, and not for the penalty thereof, as has been decided in some of the courts of this State.

380. Sec. II. Until the penalty of said official or voluntary bonds has been exhausted by previous recoveries and satisfaction thereof, no person aggrieved or injured by the conduct of any one of the obligors, shall be prohibited from suing said [bond] or bonds; nor shall any previous recovery thereon be held as a bar to such subsequent suit, until the person pleading it shall prove that recoveries have been had to the extent of the penalty of such bond: Provided, nothing herein contained shall be construed to affect any cause heretofore decided.

An Act to perfect service of Scire Facias on absent Defendants by publication, for the purpose of reviving Dormant Judgments.—Approved Feb. 8, 1850.

381. Sec. I. Be it enacted, That from and after the passage of this act, whenever any judgment obtained in any of the courts of this State, is or shall become dormant, and the defendant or defendants do or shall reside without the jurisdictional limits of this State, that said judgment may be revived against said absent defendant or defendants, by such process as is usual in case the defendant or defendants reside within the State: Provided always, that the defendant or defendants be served with a scire facias by publication in some public gazette of this State, once a month for four months, previous to the term of the court at which it is intended to revive said judgment; which service by publication, shall be as effectual in all cases, as if the defendant or defendants had been personally served.

Sec. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.
An Act to limit the lien of Judgments, rendered in any of the Courts of this State.—Approved Jan. 22, 1852.

382. Sec. I. Be it enacted, That from and after the passing of this act, no judgment rendered in any of the courts of this State, shall be enforced by the sale of any property, real or personal, which the defendant has sold and conveyed to a purchaser for a valuable consideration and without actual notice of such judgment: Provided, such purchaser, or those claiming under him, by such sale and conveyance, have been in peaceable possession of such real estate for four years, and of such personal property for two years before the levy shall have been made thereon.—[And see 29th sec. Stat. Lim.]

Sec. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

Judgment against an Executor or Administrator where the plea of plene administravit is sustained.

Whereupon, it is considered by the Court here, that the plaintiff recover against the defendant, the sum of one hundred dollars for his principal debt; the sum of twenty dollars for his interest up to this date, and the sum of fifteen dollars for his costs and charges, in this behalf laid out and expended; to be levied of the goods and chattels, lands and tenements of the Testator (or Intestate), which shall hereafter come to the hands of the defendant to be administered; and the defendant in mercy, &c. Judgment signed this May 1, 1859.

Judgment Quando Acciderint.

Whereupon, it is considered by the Court here, that the plaintiff recover against the defendant, the sum of one hundred dollars for his principal debt, the sum of twenty dollars for his interest up to this date, and the sum of fifteen dollars for his costs and charges, in this behalf laid out and expended; to be levied as to the sum of fifty dollars, of the goods and chattels, lands and tenements of the Testator (or Intestate) now in the hands of the defendant, to be administered, and as to the balance, to be levied off the goods and chattels, lands and tenements of the Testator (or Intestate) which shall hereafter come to the hands of the defendant to be administered; and the defendant in mercy, &c. Judgment signed this May, 1859.

BAIL.

383. Sec. XIII. In all cases where bail is requireable, and the plaintiff in any action shall require bail, such plaintiff shall make affidavit before any judge, justice of the inferior court, or justice of the peace within this State, (or any judge or justice of a superior court of any one of the United States, shall have annexed thereto the seal of the State from whence it shall come, and a certificate of the governor, certifying that the person taking such affidavit is one of the judges or justices of a superior court of that State,) of the amount claimed by him; and that he has reason to apprehend the loss of 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.

384. 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 or
neglect to take such bail, or the bail taken shall be deemed insufficient by the
court, on exceptions taken thereto and entry thereof made, at the first term
to which the said petition and process shall be returned, such sheriff or other
officer and his or their security, or securities, in either of the said cases, shall be
deemed and stand as a special bail; and the plaintiff may proceed to judgment
according to the provisions of the act herein-after 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.

385. 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 re-
coverey of the plaintiff. But the plaintiff, after final judgment, shall not take
out execution against such bail, until a capias ad satisfaciendum shall be first
issued thereon, and the principal cannot be found. And shall also issue a
scire facias, returnable to the said court, which shall be served on the bail,
at least twenty days before the return thereof. And after the return of such
capias ad satisfaciendum against the principal, and scire facias against the
bail, and judgment thereon, execution may issue against the principal and bail,
or either of them, or either of their estates, unless the bail shall surrender
the principal at, or before, entering up final judgment on the scire facias,
either in open court, in term-time, or to the sheriff of the county in which such
principal shall reside, at any time in vacation. And it shall be the duty of the
court to order such principal into the custody of the sheriff; and the duty
of the sheriff, in time of vacation, to receive into his custody such principal,
and in either case, to commit him, her or them to jail according to the direc-
tions of this act. Any law, usage or custom, to the contrary notwithstanding.

Affidavit requiring Bail.

STATE OF GEORGIA, } In person appeared before the undersigned, John
Houston County. } Doe, who after being sworn according to law, says,
that Richard Roe, of said county, is justly indebted to him, the sum of
five hundred dollars besides interest, (by Promissory Note past due.) And
that he, deponent, has reason to apprehend the loss of the said sum,
or some part thereof, if the said Richard Roe be not held to bail.

Sworn to and subscribed,
before me, this May 1, 1859.
James Mack, J. P.

NOTE.—The Agent or Attorney may make the affidavit to hold to Bail. Bail may be re-
quired pendente lite. Bail may also, be required where the debt is not due. And on
the Sabbath day.

JOHN DOE.
JUDICIARY.—BAIL IN CIVIL CASES.

Endorsement on the Petition and Process.
Sheriff, take good Bail in the sum of one thousand dollars.
JAMES A. PRINGLE, Plaintiff's Att'y.

Bail Bond.

STATE OF GEORGIA, } We, Richard Roe as principal, and Charles Smith
Houston County. } as security, hereby acknowledge ourselves held
and bound to John Doe, and his assigns, in the sum of one thousand
dollars—subject to the following conditions—

The conditions of the above obligation are these: whereas, a civil suit,
(Assumpsit,) requiring Bail, at the instance of John Doe against Richard
Roe, returnable to the Superior Court to be held in and for said County,
on the fourth Monday in October next, for the sum of five hundred dollars,
hath been served on said Richard Roe, by the Sheriff of said County:
now, should the said Richard Roe, in case be he cast in said suit, well
and truly pay and satisfy the condemnation of the Court, or render his
body to prison in execution of the same, in terms of the law in such
case made and provided; and upon failure thereof, the said Charles
Smith will pay the debt and costs for him, then the above obligation to
be void, otherwise, of force. This May 1, 1857.

Approved— Richard Roe, Prin. [L. S.]

James Mack, J. P. Charles Smith, Sec'y. [L. S.]

Exceptions to the Bail Bond.

At the return term of said action, comes James A. Pringle, Plaintiff's
Attorney, and says that the Bail taken in said case is insufficient in
this, to wit, [here set out distinctly the objections to the Bail.] Wherefore,
Plaintiff prays, that Madison Marshall, Sheriff of said County, and his
securities, be deemed and stand as Special Bail, in said action.

Capias ad satisfaciendum.

STATE OF GEORGIA, } To all and singular the Sheriffs of said State.
Houston County. } We command you, that you take the body of
Richard Roe, if to be found in your County, and him safely keep so
that you have his body before the Superior Court to be held in and for
said County, on the fourth Monday in April next, at the Court-house in
Perry, then and there to satisfy John Doe the sum of five hundred dol-
lars, for his principal debt, the sum of forty-five dollars for his interest,
and the sum of fifteen dollars for his costs, which lately in our said
Court said John Doe recovered against him said Richard Roe, by reason
of the non-performance of certain promises by the said Richard Roe
heretofore made, whereof the said Richard Roe is convicted and liable
as appears of record, besides your fees for this service. Herein fail
not, and have you then and there this writ.

Witness, the honorable Henry G. Lamar, Judge of said Court, this Octo-
ber 24, 1859.

WILLIAM H. MILLER, Clerk.

Return by the Sheriff on the back of the Writ.

The Defendant not to be found in this County. This October 30, 1859.

MADISON MARSHALL, Sheriff.
Scire Facias against Bail.

STATE OF GEORGIA,}

{ To the Sheriff of said County—Greeting.

 Whereas, at the April Term of the Superior Court of said County, eighteen hundred and fifty-nine, John Doe commenced his action of Assumpsit against Richard Roe, and at the commencement of said action, said John Doe filed his affidavit requiring Bail. And whereas, Charles Smith, of said County became the Bail of said Richard Roe by entering into Bond under his hand and seal, with said Richard Roe; which Bond bears date the first day of May eighteen hundred and fifty-seven, and is for the sum of one thousand dollars, with the following conditions—[here set out the conditions of the Bond verbatim;] which Bond is here in Court to be shown. And whereas, at the April Term of said Court, eighteen hundred and fifty-eight, a verdict was rendered in said action of Assumpsit, in favor of the Plaintiff against the Defendant, for the sum of five hundred dollars, besides interest and costs, upon which verdict judgment was entered up. And whereas, the Defendant having failed to satisfy the condemnation of the Court a writ of Capias ad Satisfaciendum was issued against him, upon which writ Madison Marshall, Sheriff of said County, has made the return of “the Defendant not to be found in this County.” You are therefore, hereby required to make known to the said Richard Roe and Charles Smith, that they be and appear at the next Superior Court to be held in and for said County, on the fourth Monday in October next, then and there to show cause, if any they can, why judgment should not be rendered against them on said Bond, in favor of the Plaintiff, according to the statute, in such case, made and provided.

Witness, the honorable Henry G. Lamar, Judge of said Court, this August 4, 1859. WILLIAM H. MILLER, Clerk.

Surrender of Principal by Security to the Sheriff.

STATE OF GEORGIA,}

{ I hereby acknowledge that I have received of

Houston County.}

Charles Smith the body of Richard Roe, for whom he is Bail in an action of Assumpsit pending in Houston Superior Court; in which case John Doe is Plaintiff and said Richard Roe Defendant. The surrender of the Defendant is in discharge of the Bail Bond entered into by said Charles Smith with said Richard Roe, in said case. This June 1, 1859.

MADISON MARSHALL, Sheriff.

NOTE.—The surrender of the Principal to the Sheriff by the Security, (in vacation,) authorizes the Security to move the Court in term-time, that an Exoneretur may be entered on the Minutes. If the surrender be made to the Court, the Exoneretur should be moved and entered on the Minutes at the time of the surrender.

Exoneretur.

JOHN DOE

vs.

Assumpsit and Bail.

RICHARD ROE

On reading and filing the acknowledgment of the Sheriff, of the sur-
render to him, in vacation, of the Defendant, by his Security Charles Smith, in discharge of his obligation—it is ordered, that said Security be exonerated and discharged from his liability as Bail, and that an Exoneretur be entered on the Bail Bond in said case.

Or thus.—The Defendant in this case having been surrendered into the custody of the Sheriff, in vacation, (or here in Court, as the case may be,) by his Bail—it is ordered, etc.

**An Act to extend the powers of Sheriffs and Constables in certain cases.**

—Approved Dec. 19, 1818.

386. Sec. I. It shall be lawful for sheriffs in all cases where a bail or criminal process is placed in their hands, and the person against whom it may be, is moving about from one county to another, for the said sheriff, or his deputy, to follow the said person or persons, into any county in this State, and serve the said process.

387. Sec. II. It shall be lawful for any constable, and he is hereby required, in all cases where a bail or criminal process is placed in his hands, and the person against whom the same may be, is moving about from one district to another, to serve the said process in any district within the in the county, in which he may be constable.

**An Act to amend the Judiciary Law of this State, passed the 10th day of February, in the year 1799; so far as to authorize the issuing of Bail Process in certain cases.**—Approved Nov. 8, 1820.

Whereas, great inconvenience has resulted for the want of a law authorizing plaintiffs, pending actions, to hold the defendant to bail; for remedy whereof—

388. Be it enacted, That in cases where an action is commenced and pending; or where an action may hereafter be commenced, and no bail shall have been required at the commencement of said action; or having been required, and has or may be discharged, and the plaintiff in any such action, pending the same, shall require bail, such plaintiff shall make affidavit before any judge, justice of the inferior court, or justice of the peace, within this State, (or any judge or justice of a superior court of any one of the United States; shall have annexed thereto the seal of the State from whence it shall come, and a certificate of the governor, certifying that the person taking such affidavit, is one of the judges or justices of a superior court of that State;) of the amount claimed by him, and that he has reason to apprehend the loss of 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 of the court in which such action is pending, and a copy or copies thereof affixed to the process to be issued by the clerk of said court, in which such suit is pending, and to the copy or copies of such process. And the amount sworn to shall be endorsed on such process and the copy or copies thereof.

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

When Sheriff must execute Process.

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

How Def't dealt with.

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

Bail bound as if required at the commencement of the action.

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

Bail Pendente Lire.

[For the formal parts of this affidavit, see "Affidavit requiring Bail,"] then add, "That at the commencement of said action deponent did not require Bail; (or the Bail required at the commencement of said action, having been discharged, as the case may be.) And that he deponent, has reason," etc.

An Act requiring Sheriffs and Constables in any of the Counties in this State not having Jails, to convey to the Jail of an adjoining County, persons by them arrested on a Writ of Capias ad Satisfaciendum, or any legal Process requiring Bail. And to require the Jailers of such Counties, on good and sufficient security being given for the Jail-fees, to receive and safely keep such prisoners.—Approved Dec. 13, 1829.

393. The sheriffs and lawful constables in any of the counties of this State that are not provided with a jail, be and they are hereby authorized and required, to convey persons arrested by them, by virtue of a capias ad satisfaciendum, or other civil process which may require bail, to the jail of any adjoining county; and to deliver such person or persons to the keeper of such jail. Provided, the person or persons so arrested shall refuse or neglect to give such bail as the officer arresting may be authorized to require.
JUDICIARY.—BAIL IN CIVIL CASES.

394. Sec. II. The keepers of such jail, shall and they are hereby authorized and required, to receive into their care and custody, any person or persons delivered to them in conformity to the preceding section, and him or them safely keep until they are delivered from thence according to law, or by direction or request of the plaintiff, his agent or attorney; Provided, that the plaintiff, his agent or attorney, shall give bond with sufficient security to the keeper of such jail, for the jail-fees and weekly maintenance of the person or persons so delivered to him for safe keeping.

Bond for Maintenance and Prison-fees.

STATE OF GEORGIA.} We, John Doe, as principal, and Richard Roe,  
Houston County. | as security, acknowledge ourselves bound unto  
Charles Smith, Jailer of the County of Bibb, in the sum of one hundred dollars, subject to the following conditions—

Whereas, Thomas Jones, of the County of Houston, has been arrested (by virtue of a Writ of Capias ad Satisfaciendum, issued from the Superior Court of said County of Houston, in favor of said John Doe,) and conveyed to the Jail of the County of Bibb, for safe keeping. Now, should said John Doe pay the Jail-fees and weekly Maintenance of said Thomas Jones, during the time of his confinement in said Jail, then this Bond to be void: otherwise, of force. This May 1, 1859.

Approved— John Doe, principal. [L. S]

Note.—The Plaintiff must pay the Maintenance of the Prisoner weekly, or he may be discharged on Habeas Corpus.

An Act to amend the Judiciary Law of 1799, in relation to Bail, and also to amend an act entitled “an act to amend the Judiciary Law of this State, passed the 16th day of February, 1799, so far as to authorize the issuing of Bail Process in certain cases,” passed the 8th day of November, 1820, so far as to authorize Agents, Attorneys-in-fact, or at law, to hold to Bail in all civil cases.—Approved Dec. 26, 1831.

395. Sec. I. From and after the passage of this act, it shall and may be lawful for any agent, attorney-in-fact, or at law, to hold to bail in all civil cases, and under the same rules and restrictions as are pointed out in the before-mentioned acts on that subject.

396. Sec. II. All laws and parts of laws militating against this act, are hereby repealed.

An Act to authorize the issuing, suing and executing, Attachments on the Sabbath day, in certain cases.—Approved Dec. 20, 1834.

Whereas, it sometimes happens that persons residing near the lines of this State, leave the State on the Sabbath day, and thereby place it out of the power of their creditors to stop them or their property, to satisfy debts owing by them; for remedy whereof—

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

Keeper of Jail must receive Prisoner.
Bond and Security must be given for maintenance.

Agent or Attorney may hold to Bail.
Attachment and Bail may be required on the Sabbath-day.
398. Sec. II. All laws and parts of laws that militate against this act, are hereby repealed.

An Act to define the mode of taking Bond in cases of Bail in this State. —Approved Nov. 24, 1841.

399. Sec. I. From and after the passage of this act all bonds taken in cases of bail, in this State, shall be taken payable to the plaintiff in the cause, any law to the contrary notwithstanding.

An Act in relation to proceedings to recover Debts not due.—Approved Dec. 27, 1845.

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

Affidavit under the above Statute.

STATE OF GEORGIA, } In person appeared before the undersigned, 
Houston County. } John Doe, who, after being sworn according to law, says, that Richard Roe, of said County, is justly indebted to him, the sum of five hundred dollars, (by Promissory Note, to become due.) That the amount to become due is the sum of five hundred dollars. That said Richard Roe is removing, (or is about to remove, as the case may be,) without the limits of this State. And deponent further swears, that he has reason to apprehend the loss of said debt, or some part thereof, if the said Richard Roe be not held to Bail.

Sworn to and subscribed, before me, this May 1, 1859. 
James Mack, J. P.

The Declaration.

STATE OF GEORGIA, } To the Superior Court of said County, 
Houston County. } The Petition of John Doe showeth that Richard Roe, of said County, is indebted to your Petitioner in the sum of five hundred dollars, by Promissory Note, to become due: for that, whereas, heretofore, to wit, on the third day of April, eighteen hundred and fifty-eight, the said Richard made his certain Promissory Note, and delivered the same to your Petitioner, and which is now here in Court, to be shown: whereby by the first day of January, next ensuing the date of said Note, and of the commencement of this action, he, the said Richard Roe, promised to pay Petitioner, or bearer, the said sum of five hundred dollars, for value received, which Note remains wholly unpaid. And your Petitioner avers that said Richard Roe is removing, (or is
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about to remove, as the case may be,) without the limits of this State; wherefore your Petitioner has reason to apprehend the loss of said Debt, or some part thereof, if the said Richard Roe be not held to Bail. By reason whereof, and by force of the statute in such case made and provided, the right of action hath accrued to your Petitioner in the premises: wherefore, your Petitioner brings suit and prays Process may issue, requiring the said Richard Roe, personally, or by attorney, to be and appear at the next Superior Court to be held in and for said County, to Answer your Petitioner in an action for Debt and Bail.

JAMES A. PRINGLE, Plff’s Att’y.

AN ACT to authorize the Sheriff to take new Bail where the principal has been surrendered, in certain cases, and to make valid certain Bail-Bonds taken heretofore.—Approved March 6, 1856.

401. Sec. I. That in all cases hereafter, where the bail shall or may surrender his principal, 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 before the principal has been arrested by a capias ad satisfaciendum, it shall be the duty of the sheriff to take new bail, if the bail offered is good; for the forthcoming of the principal to be arrested with a capias ad satisfaciendum, in said case; or in default thereof, to pay the debt and costs. And all bail heretofore taken, in the cases above mentioned, shall be deemed and adjudged to be good and valid in law; and the bail bound in the same way and manner he would have been, if he had become bail before the passage of this act.

Sec. II. [Repeals all conflicting laws.]

Bond under the above Act.

[For the formal parts of this Bond see “Bail Bond.”]

Whereas, John Doe, the security of Richard Roe, defendant, in an action of Assumpsit in Houston Superior Court, in favor of Charles Smith, (in which action Bail was originally required,) has surrendered the body of said Richard Roe, in discharge of his Bail-Bond in said action. And whereas, said Richard Roe tenders William Jones, as new and other security, who has been accepted and approved. Now, should said Richard Roe well and truly appear and submit to arrest on Capias ad Satisfaciendum, to be issued on the Judgment in said action of Assumpsit, and, on failure thereof, shall pay the Judgment and costs in said action; and, on his failure, said William Jones do pay the Debt and Costs for him, then this Bond to be void; otherwise, of force. This May 1, 1859.

Approved—

Richard Roe, pri’n’l. [L. S]

James Mack, J. P.

William Jones, sec’y. [L. S.]

IN ACTIONS OF TROVER, ETC.

AN ACT more effectually to Quiet and Protect the Possession of Personal Property, and to prevent taking Possession by fraud or violence.—Approved Dec. 25, 1821.

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

**Affidavit of the Plaintiff.**

STATE OF GEORGIA, } In person appeared before the undersigned,  
   Houston County. } John Doe, who being sworn, saith that he is about  
   to commence, (or has commenced, as the case may be,) his action of  
   Trover, in the Superior Court of the County aforesaid, against Richard  
   Roe, returnable to the next ensuing term of said Court; for a certain  
   Negro man named Jacob, of the value of eight hundred dollars, and of  
   the yearly value for hire, of one hundred dollars. That deponent does,  
   verily and bonâ fide claim said Negro man as his right and property, (or  
   some valuable interest in said Negro man, as the case may be.) And  
   that deponent has reason to apprehend that said Negro man will be  
   eloenid, (or removed away, or will not be forthcoming, as the case  
   may be,) to answer the Judgment in said action of Trover, (or Execution,  
   or Decree, as the case may be,) unless said Richard Roe shall be  
   required to enter into Recognizance, agreeably to the statute in such  
   case made and provided.  

Sworn to and subscribed,  
before me, this May 1, 1859.  
James Mack, J. P.  

JOHN DOE.

**Declaration in Trover.**

STATE OF GEORGIA, } To the Superior Court of said County.  
   Houston County. } The Petition of John Doe showeth, that Richard Roe of said County,  
   hath damaged your Petitioner in the sum of one thousand dollars: for
that your Petitioner, heretofore, to wit, in the County aforesaid, on the first day of January, eighteen hundred and fifty-eight, was lawfully possessed, as of his own property, of a Negro man named Jacob, of yellow complexion, twenty-five years of age, of the value of eight hundred dollars, and of the yearly value for hire, of one hundred dollars. And being so possessed thereof, your Petitioner afterwards, on the day and year above mentioned, in the County aforesaid, lost said Negro man Jacob out of his possession. And said Negro man Jacob, afterwards, on the day and year aforesaid, in the County aforesaid, came to the possession of said Richard Roe by finding. Yet the said Richard Roe, well knowing the said Negro man Jacob, to be the property of your Petitioner, and of right to belong and appertain to him, (but contriving and fraudulently intending, craftily and subtly to deceive and defraud your Petitioner in this behalf,) hath not as yet delivered said Negro man Jacob to your Petitioner, although often requested so to do, but hath hitherto wholly refused so to do. And afterwards, to wit, on the day and year aforesaid, in the County aforesaid, said Richard Roe converted and disposed of said Negro man Jacob, to his own use, to the damage of your Petitioner, two thousand dollars. Wherefore your Petitioner brings suit and prays Process may issue, requiring the said Richard Roe, to be and appear at the next Superior Court to be held in and for said County, to answer your Petitioner in an action of Trover. And your Petitioner, etc.

Simon Wade, Plff's Atty.

Recognizance.

STATE OF GEORGIA, } Be it remembered, that on the first day of May,  
Houston County. } eighteen hundred and fifty-eight, we, Richard Roe  
} as principal, and Charles Smith as security, both of said County, do  
} acknowledge to owe John Doe and his assigns, the sum of sixteen hun-  
} dred dollars, subject to the following conditions —

Whereas, said John Doe has commenced, (or is about to commence, 
as the case may be,) his action of Trover against the said Richard Roe, 
returnable to the Superior Court of said County, for a certain Negro 
man named Jacob, of the value of eight hundred dollars. Now, should 
the said Richard Roe well and truly produce and have forthcoming 
said Negro man Jacob to answer such Judgment (Execution or Decree, 
as the case may be,) as may be issued or rendered against him in said 
action of Trover; and well and truly pay the eventual condemnation 
money recovered in said case, then this Recognizance to be void; 
otherwise, of force.

[Executed in presence of } Richard Roe, principal. [L. S.]  
W. H. Miller, Clerk, S. C. } Charles Smith, security. [L. S.]

IN ACTIONS EX DELICTO.

An Act to authorize Justices of the Inferior Court to grant Orders to 
hold to Bail in cases arising ex delicto.—Approved Feb. 16, 1854.

403. Sec. 1. Be it enacted, That from and after the passage of this 
act, it shall and may be lawful for any justice of the Inferior Court of this 
Justice of I. C. may grant Order for Ball.
JUDICIARY.—BAIL IN CIVIL CASES.

State, to grant an order to hold to bail in all cases sounding in damages, whether the case shall be made returnable to the superior or inferior court of the county in which such justice may reside.

404. Sec. II. That said order when so granted, shall have the same force and effect as if granted by a judge of the superior court.

Sec. III. That all laws and parts of laws, militating against this act, be and the same are hereby repealed.

Order by the Justice of the Inferior Court.

STATE OF GEORGIA, ¶ To the Clerk of the Superior Court, and to the
Houston County. ¶ Sheriff of said County.

The Declaration and Affidavit of the Plaintiff having been presented to me, you the said Clerk, are hereby required to issue Bail-process against the Defendant, in the sum of two thousand dollars. And you the said Sheriff are required to execute said Bail-process, according to the statute in such case made and provided.

Witness my hand and official signature, this May 1, 1859.

HENRY M. HOLTZCLAW, J. I. C.

An Act to simplify the proceedings in Bail Cases, and for other purposes therein mentioned.—Approved Dec. 21, 1857.

405. Sec. I. Whenever bail shall be required in any case about to be instituted in the courts of this State, it shall be lawful and sufficient to serve the defendant with a process and copy of the affidavit, as in cases of bail pending the action; and at the term to which said process is returnable, the plaintiff shall file his declaration; and the subsequent proceedings, shall be as in other cases.

406. Sec. II. Whenever such process, with a copy of the affidavit annexed, and a copy or copies of such process and affidavit shall be placed in the hands of the sheriff, it shall be his duty to arrest the defendant or defendants; to serve him, her or them, with a copy or copies of said process and affidavit, and to deal with him, her or them, as is now required by the laws of force in this State, regulating cases where bail is required.

407. Sec. III. Nothing in this act shall be held to repeal any portion of the laws heretofore of force, regulating cases in which bail may be required, but shall be construed to be permissive only, and not compulsory, as to the form to be used.

408. Sec. IV. A substantial compliance with this act, as to service upon the defendant or defendants, shall be deemed sufficient to authorize the case to proceed, as against such defendant or defendants, notwithstanding the bail may be discharged for irregularity in the process, affidavit, copies or service.

An Act for the protection of Securities and Endorsers, and to authorize the issuing of Bail Process in certain cases.—Approved Dec. 22, 1857.

409. Sec. I. That when a security or endorser shall make an affidavit before any judge, justice of the inferior court, or justice of the peace, within this State, that he is security or endorser, upon any promissory note, single-bill, or due-bill, or bond, and that he apprehends that the payment of said debt, or some part thereof, will devolve upon himself, if the principal is not held to bail, and present the same to the owner (of said note, single-bill, or due-bill, or bond,) his agent or attorney, it shall be the duty of said owner, to commence suit forthwith, and such affidavit shall take the place of the one
now required of plaintiff; upon which bail process shall issue. And all other proceedings shall be the same as are now authorized in bail process [cases.]

410. Sec. II. That upon failure of the owner of said promissory note, single Bill, or due-bill, or bond, to sue, as herein-before required, the security or endorser shall no longer be held liable for the same. All laws to the contrary notwithstanding.

**Affidavit under the above Statute.**

STATE OF GEORGIA, }  
Houston County. 

In person appeared before the undersigned, a Justice of the Peace, in and for said County, John Doe, who being sworn saith, that he is Security on a Promissory Note for one hundred dollars, given by Richard Roe to John Smith; and that deponent apprehends that the payment of said Note, or some part thereof, will devolve upon himself, if the said Richard Roe is not held to Bail.

Sworn to and subscribed, before me, this May 1, 1859,  

James Mack, J. P.

**CLAIM.**

An Act to alter and amend so much of the thirty-second section of the Judiciary, passed the 16th of February, 1799, as respects Claims of property, in the Superior and Inferior Courts of this State.—Approved Dec. 15, 1821.

Whereas, various constructions have been given in the different Courts of this State, as it regards Claims of property, which tend to the manifest injury of the community, and frequently produced not only injustice to the Plaintiffs-in-Execution, but evidently to oppress and harass them by delays of justice—

411. Sec. I. *Be it therefore enacted*, That when any sheriff or coroner shall levy an execution on property claimed by any person not a party to said execution, such person shall make oath [see 417.] to said property. And it shall be the duty of such sheriff or coroner to postpone the sale, or future execution of the judgment, until the next term of the court from whence said execution issued: Provided, the said execution is or should be levied on personal property, but should said execution be levied on real property, and the same should be claimed in manner aforesaid, then and in that case, it shall be the duty of the officer making the levy upon real property, to report the same, together with the execution and claim, to the next term of the superior court of the county in which the land so levied on shall lie. And the court to which such claim shall be reported, shall cause the right of property, to be decided on by a jury, at the first term, unless special cause be shown to induce said court to continue the case for one term and no longer: Provided, the person claiming such property, or his agent, or attorney, shall give bond to the sheriff or coroner, as the case may be, with good and sufficient security, in a sum equal to double the amount of the property levied on, at a reasonable valuation, to be judged of by the levying-officer, conditioned to pay the plaintiff all damages which the jury on the trial of the right of property, may assess against him, in case it should appear that said claim was made for the purposes of delay. And every juror, on the trial of the claim of property, either real or personal, shall be sworn, in addition to the oath usually administered, to

Claimant must make Oath.  
Officer must return Claim.  
Land must be tried in the County where it lies.  
Claim to be tried at the first term.  
Claimant must give Bond and Security.  
Condition of the Bond.  
Additional Oath as to damages.
give such damages, not less than ten per cent., as may seem reasonable and just, to the plaintiff against the claimant, in case it shall be sufficiently shown, that said claim was made for delay only. And it shall be lawful for such jury to give verdict in manner aforesaid, by virtue whereof judgment may be entered up against such claimant and his security or securities, for the damages so assessed by the jury, and the costs of the trial of the right of property: And provided also, that the burden of proof shall lie upon the plaintiff-in-execution, in cases where the property levied on, is at the time of such levy, not in the possession of the defendant in execution.

412. Sec. II. Whenever such claim of property may be made in terms of this act, the person claiming property levied on and returned to the proper court, by said sheriff or coroner, shall not be permitted to withdraw or discontinue his said claim, more than once, without consent and approval of the plaintiff-in-execution, or some person duly authorized to represent such plaintiff; but said court shall proceed to the trial of said claim of property in manner aforesaid. And it shall be the duty of the jury to award damages accordingly: And provided further, that either party who may be dissatisfied with the verdict of said jury, may enter, his, her or their appeal, to a special jury in the superior court of the county where said trial shall have been had; which appeal shall be subject to the same rules and regulations as govern in appeals in ordinary cases.

413. Sec. III. So much of said thirty-second section of the judiciary act of 1799 as regards claims of property, which may militate against this act is hereby repealed.

**Claimant's Affidavit.**

STATE OF GEORGIA, In person appeared before the undersigned, a Justice of the Peace, in and for said County, Charles Smith, who being duly sworn, deposeth and saith, that a certain Negro Fellow named Jacob, of yellow complexion, and twenty-five years of age, (who has been levied on by Madison Marshall, Sheriff of said County, by virtue of a fieri facias issued from the Superior Court of said County, in favor of John Doe against Richard Roe,) as the property of said Richard Roe, is the property of deponent.

Sworn to and subscribed, before me, this May 1, 1859.

James Mack, J. P.

**Charles Smith.**

**Claimant's Bond for Damages.**

STATE OF GEORGIA, We, Charles Smith as principal, and William Jones as security, both of said County and State, hereby acknowledge ourselves held and bound to John Doe, Plaintiff-in-Execution, in the sum of one thousand dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, a certain Negro Fellow named Jacob, twenty-five years of age, has been levied on by Madison Marshall, Sheriff of said County, by virtue of a fieri facias issued from the Superior Court of said County, in favor of John Doe against Richard Roe,) which Negro Fellow is claimed by said Charles Smith, as his property: now, should said claimant, well and truly, pay all the Damages which the Jury on the trial of the right of property may assess against him, in case it should appear that said claim was
made for the purposes of delay, then this obligation to be void, otherwise of force. This May 1, 1859.

Attest—

James Mack, J. P.  
Charles Smith, principal. [L. S.]  
William Jones, security. [L. S.]

An Act to provide for the trial of Claims of Slaves levied on under Execution.—Approved Dec. 7, 1824.

414. In all cases where a writ of execution from a justices' court shall have been levied on one or more slaves, and a claim to such slaves shall have been interposed, according to the laws in force for the time being, such execution and claim shall be returned to the next term of superior or inferior court, whichever may first happen, of the county in which such execution was issued, and shall be there tried in the same manner as other claims which by law are or shall be returnable to those courts respectively.

An Act to define and make certain the mode of assessing Damages, upon the trial of Claims of property in the Superior and Inferior Courts in this State.—Approved Dec. 21, 1829.

Whereas, doubts have been entertained whether upon the trial of Claims of property, Damages should be assessed upon the amount of the Execution, or the value of the property claimed, or upon the amount of the claim-bond; for remedy whereof—

415. Be it enacted, That from and immediately after the passage of this act, upon claims of property now pending, or which may be hereafter pending, in the superior or inferior courts of this State, where damages shall be found by [the] jury, the said damages shall be assessed upon the whole amount then due upon the execution levied: Provided, the value of the property in dispute exceeds the amount of said execution. And upon the value of the property claimed when the same is less than the amount of the execution levied. Any law, usage or custom, to the contrary notwithstanding.

An Act to amend the several acts regulating Attachments in this State, and to regulate proceedings in certain cases, when the Plaintiff shall die after rendition of Judgment.—Approved Dec. 29, 1830.

416. Sec. VI. In all cases where any claim shall be interposed for property levied on by virtue of a fieri facias from any of the courts of this State, and pending such claim the plaintiff shall die, it shall and may be lawful for the executor or executors, administrator or administrators, of such deceased plaintiff, upon motion, in the court where such claim is pending, to be made parties instantaneously; and the said case shall proceed without further delay: Provided, the said executors or administrators, shall produce in court their letters testamentary or of administration: And provided, they shall give to the claimant, or his attorney, twenty days' notice of the said intended application to make such parties. And provided always, in such cases, where there are more than one plaintiff, the cause shall proceed in the name of the survivor. And this act shall not be applicable, except when the last surviving plaintiff shall die while such claim is pending.

Sec. VII. All laws and parts of laws militating against this act, are hereby repealed.
AN ACT to amend the Claim Laws now in force in this State.—Approved Dec. 21, 1839.

417. Sec. I. Be it enacted, That upon the levy of any execution hereafter to be made, upon any property, whether real or personal, it shall be lawful for any person or persons desiring to claim the same, to do so by him, her or themselves; his, her or their agent or attorney; in the same manner and under the same restrictions as are provided for the issuing of Attachment.

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

AN ACT to be entitled an act to Alter and Amend the Claim Laws of this State.—Approved Dec. 11, 1841.

418. Be it enacted, That in all cases of claim, whether the levy be made under attachment or execution, the amount of any bond given for the forth-coming of the property levied on, shall be in double the value of such property, to be estimated by the levying-officer. And all such bonds shall be made payable to the plaintiff in attachment or execution, who may sue and recover on the same, upon breach of the condition thereof.

Forthcoming Bond under Claim.

STATE OF GEORGIA, 
1. We, Richard Roe as principal, and Samuel Webb as security, both of the State and County aforesaid, hereby acknowledge ourselves held and bound to John Doe Plaintiff-in-Execution, in the sum of two thousand dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, Madison Marshall, Sheriff of said County, has levied a fieri facias, (issued from the Superior Court of said County, in favor of John Doe against Richard Roe) on a certain Negro Fellow named Jacob, as the property of said Richard Roe. And whereas Charles Smith hath claimed said Negro Fellow as his property; now should said Richard Roe, well and truly deliver said Negro Fellow to said Sheriff, at the day and time of sale, provided said Negro Fellow should be found subject to said fieri facias, then the above obligation to be void; otherwise of force. This May 1, 1859.

Attest—
James Mack, J. P.

RICHARD ROE, principal. [L. S.]
SAMUEL WEBB, security. [L. S.]

Issue in Claim Case.

April Term, 1859. And now at this Term, comes the Plaintiff-in-Execution, by his Attorney John M. Giles, and says, that the Negro Fellow Jacob, who has been levied upon as the property of Richard Roe, and claimed by Charles Smith as his property, is the property of said Richard Roe, Defendant-in-Execution; and that said Negro Fellow Jacob, is subject to satisfy the Execution levied on him, in favor of Plaintiff, and this he prays may be inquired of by the country, &c.

JOHN M. GILES, Plff's At'y.
And the Claimant doth the like, and saith, that said Negro Fellow Jacob, is not subject to said Execution, &c.

James A. Pringle, Cl'm'ts At'y.

Oath of the Jury.

"You do solemnly swear, that you will give such damages, not less than ten per cent. as may seem reasonable and just, to the Plaintiff against the Claimant, in case it shall be sufficiently shown that said Claim was made for delay only—so help you God."

Verdict of the Jury.

We, the Jury, find the property in dispute subject to the Execution. And we further find fifteen per cent. Damages, upon the whole amount of the execution, against the Claimant, for a frivolous Claim, and the Costs of suit.

Marcus Kunze, Foreman.

Judgment of the Court.

Whereupon, it is considered and adjudged by the Court here, that said Negro Fellow Jacob, the property levied on, is subject to the fieri facias levied on him, and that the Sheriff proceed to collect the amount of said fieri facias by sale of the condemned property. Judgment signed, this October 26, 1859.

John M. Giles, Pl'ff's At'y.

Judgment for Damages and Costs.

Whereupon, it is considered and adjudged by the Court here, that the Plaintiff-in-Execution do recover against the claimant Charles Smith, and his Security William Jones, the sum of one hundred dollars for his damages, and the sum of fifteen dollars for his costs, in this behalf expended. And the Claimant and his Security, in mercy, etc. Judgment signed, this October 26, 1859.

John M. Giles, Pl'ff's At'y.
NEW TRIAL.

420. 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.

421. 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. 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.

422. Sec. LVIII. All new trials shall be had by a special-jury, to be taken from the grand-jury list of the county.

423. All new trials shall be had by a special-jury to be taken from the grand-jury list of the county, and struck in the presence of the court, in the following manner. The clerk shall produce a list of the original panel of grand-jurors, returned to the term in which such trial shall be had, from which the parties or their attorneys shall alternately strike out one until only twelve shall remain, who shall forthwith be impannelled and sworn to try the cause.

And in all cases the party applying for such new trial, shall strike first. And in case of refusal in either to strike on the calling of the cause, the judge presiding shall order some officer of the court, or other person, to proceed to strike the said jury, in the same manner as the party refusing might or could have done. And it shall be the duty of all persons summoned on the grand-jury, to attend the courts for the purpose of determining such new trials, whether they be sworn on the grand-jury or not.

NOTE.—The Practice is, to apply for a Rule Nisi, at the Term at which the Verdict has been rendered. If the Rule be granted, (which is generally made returnable at the succeeding Term,) it is entered, by the Clerk, on the Motion Docket, and a copy is served on the opposite Counsel; or, what is more usual, the Counsel acknowledges service and waives copy, on the back of the Rule. If it be desired that the Rule should act as a supersedeas, it must be so expressed, in the body of the Rule.

AN ACT to regulate the granting of New Trials.—Approved February 20, 1854.

424. Sec. I. Be it enacted, That from and after the passage of this act, it shall be obligatory upon the superior courts of this State, to grant new trials in all cases where an exception to any portion of the pleadings may be illegally sustained, or illegally overruled by the presiding judge, against the applicant for a new trial; in all cases where any evidence may be illegally
submitted to, or illegally withheld, from the jury, against the demand of such applicant; in all cases where the presiding judge may deliver an erroneous charge to the jury, against such applicant, or refuse to give a legal charge in the language requested, when the charge so requested is submitted in writing; and in all cases where any evidence, not merely cumulative in its character, but relating to new and material facts, shall be discovered by the applicant after the rendition of a verdict against him, and shall be brought to the notice of the court within the time now allowed by law for entertaining a motion for a new trial.

425. Sec. II. That it shall be obligatory upon the supreme court of this State, to reverse the judgment below and award a new trial in every case, where it shall appear that an error has been committed in any of the points enumerated in the first section of this act, by the judge presiding at the trial of the cause.

426. Sec. III. That the judges of the superior courts may have the power to exercise a sound discretion in granting new trials in cases where the verdict may be decidedly and strongly against the weight of evidence, although there may appear some slight evidence in favor of the finding. And the supreme court shall have power to revise and control such discretionary power in the superior courts.

427. Sec. LXI. The act entitled "an act to revise and amend the judiciary system of this State," passed at Louisville, on 9th February, 1797, from the first to the 67th clause inclusive, be and the same is hereby repealed.

No justice of the peace shall sustain or try any satisfaction in damages, for any trespass on the person or property of such plaintiff.

EXECUTION, CONTROL, ETC.

428. 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 to the next term of the court out of which the same issued, which court shall determine thereon, at such term.

429. Sec. XXXIII. No sales in future shall be made by sheriffs, of property taken under execution, but on the first Tuesday in each month, and between the hours of ten and three in the day, [see sheriff.] And it shall be the duty of the sheriffs to give thirty days' notice 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 three of the most public places in the county where such sales are to be made, And shall give a full and complete description of the property to be sold; making known the name of the defendant, and the person who may be in possession of the property, except horses, hogs and cattle, which may be sold at any time by the consent of the defendant; and in which case it shall be his duty to give to 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.
ILLEGALITY OF EXECUTIONS.

Affidavit of Illegality.

GEORGIA—HOUSTON COUNTY.

JOHN DOE vs. RICHARD ROE.  

$500 principal debt, etc.

Before the undersigned, personally appeared Richard Roe, Defendant in the above-stated fi. fa., who being sworn according to law, saith, that the above-mentioned fi. fa. is proceeding against him illegally, for the following reasons, to wit—

First, because, etc.  
Secondly, because, etc.  

Sworn to and subscribed, before me, this May 1, 1859.

Richard Roe.

Issue formed on the above Affidavit.

And now at this Term, comes the Plaintiff in Execution, by his Attorney, James A. Pringle, and says, that, [traversing the first ground of illegality;] that, [traversing the second ground of illegality, etc.] but that said fi. fa. is open for the full amount thereof. And this the Plaintiff prays may be inquired of by the country, etc.

James A. Pringle, Att'y pro Pl'ff in fi. fa.

Joining Issue.

And the Defendant in Execution, by John M. Giles, his Attorney, doth the like, etc.

John M. Giles, Att'y pro Def't in fi. fa.

Verdict of the Jury.

We, the Jury, find the Issue in favor of the Plaintiff in Execution.

James Long, Foreman.

Judgment of the Court.

The above Issue having been submitted and tried, at the present Term; and the Jury having returned their Verdict, upon said Issue, in favor of the Plaintiff in Execution, it is therefore, on motion, ordered and adjudged by the Court, that the Illegality filed in said case, be overruled and dismissed. And it is further ordered, that said fi. fa. proceed. And it is further ordered, that the Plaintiff in fi. fa. do recover from the Defendant, ten dollars for his costs and charges, in this behalf sustained. Judgment signed this May 10, 1859.

James A. Pringle, Att'y pro Pl'ff in fi. fa.

An Act to amend the thirty-second section of the Judiciary System of this State, passed the 16th day of February, 1799, so far as relates to Illegality in Executions.—Approved Dec. 28, 1838.
430. Sec. I. *Be it enacted,* That from and immediately after the passage of this act, when any person against whom an execution shall issue illegally, shall make oath thereof, and shall state the cause of such illegality, the sheriff shall return the same to the next term of the court from which such execution issued: *Provided,* that the person alleging such illegality, shall also deliver to the sheriff or other lawful officer, a bond with good and sufficient security, conditioned for the delivery of the property levied on, at the time and place of sale, in the event of the causes or grounds of the alleged illegality being overruled by the court, and not otherwise. And in all cases it shall be the duty of the sheriff or other officer, to levy on property, where any can be found, before receiving such affidavit.—[See 431.]

Sec. II. All laws or parts of laws repugnant to this act, be and the same are hereby repealed.

**Forthcoming Bond.**

STATE OF GEORGIA,  
Houston County.  

We, Richard Roe as principal, and Charles Smith as security, acknowledge ourselves held and bound to Madison Marshall, Sheriff of said County, in the sum of two thousand dollars, subject to the following condition—

The condition of the above obligation is such—that whereas, said Sheriff has levied a *fl. fa.* issued from the Superior Court of said County, in favor of John Doe against Richard Roe, for the sum of one thousand dollars, principal debt, besides interest and costs, upon a certain Negro Fellow named Jacob, of yellow complexion, about twenty-five years of age. And whereas, said Richard Roe has filed an Affidavit of Illegality against said *fl. fa.* returnable to the next ensuing term of the Court from which said *fl. fa.* issued: now, should said Richard Roe, well and truly deliver said Negro Fellow Jacob to said Sheriff, at the time and place of sale, in the event of the causes or grounds of the alleged Illegality being overruled by the Court, then the above obligation to be void; otherwise of force. This May 1, 1859.

Approved,—

   Richard Roe, prin'. [L. S.]

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

An Act in relation to Affidavits of Illegality.—Approved Dec. 27, 1845.

431. Sec. I. *Be it enacted,* That when any affidavit of illegality shall be filed in terms of the law, for the purpose of staying proceedings when an execution is levied on property, the property so levied on, shall be subject to levy and sale under other executions. And the officer making the first levy, shall claim, receive, hold and retain such an amount of the proceeds of sale as the court shall deem sufficient to pay the execution first levied, including interest up to the time of the Court, at which said illegality shall be determined. And any bond given by the defendant on filing such affidavit, shall be released and discharged, so far as relates to the property sold.

An Act in relation to Affidavits of Illegality of Executions.—Approved Feb. 22, 1850.

432. Sec. I. *Be it enacted,* That from and after the passage of this act, it shall and may be lawful for the defendant or defendants in execution, in cases of illegality of execution, by leave of the court, to make any amendment of the affidavit of illegality which the defendant or defendants may deem necessary, and which amendment may be made, either by the insertion of new grounds of illegality, or the correction of errors and mistakes in the affidavit of
illegality. And the said amendments when made and sworn to, shall be taken as part of the original affidavit: Provided always, that the amending party shall not be entitled to any delay or continuance of said case to which he would not have been entitled in case his affidavit had been perfect in the first instance.

433. Sec. II. Whenever an amendment is made under the provisions of this act, the plaintiff in execution or his counsel, if surprised by the amendment, shall and may move a continuance of the case, and the court shall charge the continuance to the amending party.

An Act to amend the thirty-first section of the Judiciary act of 1799.—Approved Dec. 14, 1811.

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

435. Sec. II. Where any execution shall have issued, or may hereafter issue, against the body of any defendant, and the same shall not have been satisfied, it shall be lawful for an execution to issue against the property of such defendant or defendants on the return of said execution, which had been issued against the body of the said defendant or defendants. And that when an execution against the body of any defendant shall have been served, the party on whom the same shall have been served shall be released: Provided, he, she or they, shall deliver to the officer serving the same, the property which shall, in the opinion of such officer, be sufficient to discharge the debt and all costs, and give sufficient security to the said officer, that the property so delivered is bona fide the property of the defendant or defendants, and subject to the discharge of the said debt, in which case, the officer shall return the execution so issued against the body of the defendant or defendants, and take out an execution against the property of such defendant or defendants, and proceed to advertise and sell the property so delivered up to satisfy such execution as heretofore practised.

Writ of Fieri Facias.

STATE OF GEORGIA, } \nHouston County. \nTo all and singular, the Sheriffs of this — \nState Greeting.

We command you, that of the goods and chattels, lands and tenements of John Doe, you cause to be made the sum of one thousand dollars, for principal Debt; the sum of fifty dollars, for Interest to this date, and the sum of twenty dollars cost. Which lately, to wit, on the twentieth day of April, eighteen hundred and fifty-nine, Richard Roe, in our Superior Court, held in and for said County, recovered against said
John Doe, whereof the said John Doe is convicted and liable, as appears to us of record.

And have the said moneys before our said Superior Court, to be held on the fourth Monday in October next, to render to the said Richard Roe, his damages, costs and charges aforesaid. And have you, then and there, this Writ.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 1, 1859.

WILLIAM H. MILLER. Clerk.

Bond under the foregoing Statute.

STATE OF GEORGIA, } We, John Doe as principal, and Richard Doe
Houston County. } as security, acknowledge ourselves held and bound
unto John L. Halstead, sheriff of said County, in the sum of one
thousand dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said
John Doe has been arrested by said Sheriff by virtue of a Writ of Ca-
pias ad Satisfaciendum, issued from the Superior Court of said County,
in favor of Charles Smith, for the sum of five hundred dollars. And
whereas, said John Doe has delivered to said Sheriff, a certain Negro
boy named Julius, as his property. Now, should said Negro boy, prove
to be bond fide the property of said John Doe, and subject to the dis-
charge of the said debt, then this obligation to be void; otherwise of
force. This May 1, 1859.

Attest—

James Mack, J. P.

John Doe, prin'l. [L. S.]

Richard Roe sec'y. [L. S.]

An Act to make Bank and other Stock, subject to Execution.—Approved
Dec. 21, 1822.

436. From and after the passing of this act, the shares or stock owned by
any person in any of the banks, or other corporations, in this State, shall be
subject to be sold by the sheriff, or his deputy, under execution.

437. Sec. II. When any sheriff, or his deputy, shall have placed in his
hands, any execution against any person who owns any stock or shares in any
of the banks or corporations, of this State, it shall be lawful, and he is hereby
required, on application of the plaintiff, his agent or attorney, to endorse on
said execution, a levy of the number of shares belonging to the defendant, and
after advertising the same, agreeably to the law regulating sheriffs' sales, shall
thereafter proceed to sell the said shares or stocks: Provided always, that
he shall set up one share at a time, and shall sell no more than is sufficient to
satisfy the amount of executions then in his hands.

438. Sec. III. When any constable shall have any execution placed in
his hands against any person who is the owner of any shares or stock in
any bank, or other corporation, in this State, it shall be lawful, and he is
hereby required, on the application of the plaintiff, his agent or attorney,
to endorse a levy on said execution or executions, in like manner. And it
shall be his duty to make return of the same to the sheriff of the county
in which he lives, which said sheriff shall proceed to sell, as pointed out by
the second section of this bill.

439. Sec. IV. When the sheriff, or his deputy, shall sell any shares in
any bank, or other corporation, in this State, he shall give a certificate of
such sale to the purchaser.

440. Sec. V. The officer of the bank, or other corporation, whose duty
it may be to make transfers of stock, on the books of the bank, or other
corporation, shall and he is hereby required, to make a transfer of the
stock purchased under this act, to the purchaser of the same, upon his, her
or their producing [the] certificate or certificates of the said officer.

441. Sec. VI. Any Transfer made by the defendant of his bank, or
other stock, after judgment obtained against him or her, shall be void:
Provided, that notice of the obtainment of such judgment be served on
the cashier of such principal bank, or any of its branches, or the proper of-
fer of such other corporation, within twenty days after said judgment is
obtained.

An Act for the Relief of Securities.—Approved December 22, 1840.

Whereas, great inconvenience arises, and often great injustice [is] done
to individuals, being parties in execution, under the existing law, as Co-
securities—for the fact, that whereas, one Security, as the case may be,
having been compelled, under Execution, to pay the debt or obligation of
his principal, is not allowed to control or collect, by said Execution, each
Security's proportionable part of said Execution, so paid; but must pro-
ceed by an action at law; for remedy whereof—

442. Sec. I. Be it enacted, That from and immediately after the pas-
sage of this act, any security, who may be sued, together with other securi-
ties, shall pay or discharge any execution or executions issued against prin-
cipal or co-securities, shall after an entry is made on the said executions by
the collecting officer, that the same has been well and truly paid by said
security, then and in such cases, the said security so paying or discharging
said execution [shall have the control thereof] against each co-security who
may have been made a party to said suit, for the proportionable part, equi-
tally due by each, and no more; [see 446:] Provided nevertheless, that all
should be equally responsible, if not, then to be equally divided or paid
by those who are.

443. Sec. II. Any execution so paid or satisfied by two or more secu-
rities, shall be held as the joint property of said securities against all the
parties equally concerned for their proportionable part.

444. Sec. III. After payment and entry made, as herein prescribed, it
shall be the duty of the officer making the entry to deliver said execution
to the security who shall have made the payment, to be used and controlled
as herein mentioned.

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

An Act to explain and amend the first section of an act approved twen-
tieth December, eighteen hundred and twenty-six, entitled "an act to
define the liability of Securities on Appeal; on Stay of Executions, and
for the protection of Bail on Recognizance, Bond, Note, or other Con-
tract." And also, to explain and amend the first section of an act ap-
proved December twenty-sixth, eighteen hundred and thirty-one, en-
titled "an act to alter and amend an act, entitled an act to define the
liability of Securities on Appeal; on Stay of Executions, and for the
protection of Bail on Recognizance, Bond, Note, or other Contract."—
Approved December 27, 1845.

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

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

An Act to alter, amend and explain the first section of an act passed for the Relief of Co-Securities, assented to 22d December, 1840. And to authorize Constables to levy certain Executions.—Approved Feb. 8, 1850.

Whereas, great doubt exists whether a Co-Security who has been sued with other securities as such, as also, co-securities who have omitted to sign the original note or contract as security, and also neglected to make special defence at the trial of the same, showing him or themselves security on the original contract; and against whom executions have issued; and who have been compelled to pay off the same, can have control of the same for the purpose of reimbursing him or themselves out of the property of the co-securities:—[See 451.]

446. Sec. I. For remedy whereof, be it enacted, That from and immediately after the passage of this act, any security who may have been, or who may hereafter be sued as such, with other co-securities, and against whom execution may have been, or may be issued, and who may have been, or may hereafter be compelled to pay off the same, shall after an entry made by the collecting officer, that the same has been well and truly paid by such security, have control of the execution or executions for the purpose of reimbursing him or themselves proportionably, out of the property of the co-security or securities.

447. Sec. II. Any security who may have been, or may be sued togeth-er with other securities, and who have omitted or may omit to sign the original note or other contract, as security; and who when sued, have neglected or may neglect to make special defence at the trial, showing himself or themselves security on the original contract; and against whom execution has issued or may issue; and who have been or may be compelled to pay off the same, shall upon showing to the court from whence said execution or executions issued, that he or they were bona fide security or securities on the original contract, and not interested in the original consideration, have an entry by the court, that he or they are security or securities, on the execution or executions, and after which and upon having an entry made by the collecting officer, on the execution or executions, that the same has been well and truly paid by said security or securities, then and in such cases, said security or securities so paying off and discharging said execution or executions, shall have control of the same for the purpose of collecting by levy and sale, from each co-security so sued together, or such as may be responsible, the proportionable share due by each, upon such execution or executions: Provided nevertheless, that if any should not be responsible, then the amount so paid on said execution or
executions by such security, is to be equally divided between those securities who are.

448. Sec. III. That in all cases where any sheriff may be a defendant in execution, it shall be lawful for the plaintiff to place his execution in the hands of any constable of the county, who shall be and he is hereby authorized to levy and sell, as the coroner or sheriff of an adjoining county is authorized to do in such cases.

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

Entry by Collecting-Officer.

Received, May 1, 1859, the whole amount of this Execution, principal, interest and cost, amounting to five hundred dollars of John Doe, one of the Securities; and the control given to him, according to law.

MADISON MARSHALL, Sheriff.

Order of the Court.

JOHN DOE vs. RICHARD ROE, CHARLES SMITH and JAMES WILLIS. Fi. Fa. from Houston Superior Court, returnable to October Term, 1858.

Fi. Fa. Principal debt, $500 00.
Interest, $50 00.
Costs, $17 00.

It appearing to the Court here, that Charles Smith and James Willis, were bona fide securities on the Note, the foundation of the Plaintiff's demand, and in no way interested in the consideration thereof. And it appearing that said Charles Smith has been compelled to pay off said fi. fa. It is ordered, that said Charles Smith have the control of said fi. fa. for the purpose of collecting by levy and sale, from said James Willis, the proportionable share due by said James Willis on said fi. fa. This October 25, 1859.

JAMES A. PRINGLE,
Att'y pro Charles Smith.

An Act to amend an act entitled "an act to alter and amend an act entitled an act to define the liability of Securities on Appeals, &c.—Approved Dec. 26th, 1831."—Approved Feb. 23d, 1850.

449. Sec. I. Be it enacted, That whenever any person has or shall become surety on any note, bond or other contract, and fails to sign his name as such, and separate actions are brought against such surety and his principal, and the surety shall or may pay off the judgment rendered against himself; and shall make it appear to the court in which the judgment was obtained, that he was only a surety on such bond, note, &c., and not interested in the consideration thereof; that then and in that event, he shall be entitled to the control of the judgment against his principal, for the purpose of remunerating himself out of his property.

450. Sec. II. When any surety shall or may sign his name as such, to any bond, note or other contract, and separate suits are brought against him and his principal, that he shall be sued as surety, and as such, mesne and final process shall go against him; and on his paying off the judgment obtained against himself, he shall have control of the execution against his principal for his reimbursement.

451. Sec. III. Where there are two or more sureties to any note, bond
or other written contract, and such sureties are or may be sued in separate
actions, the surety paying off the debts shall have the control of the executions
obtained against his co-securities, for the purpose of collecting out of them
their pro rata part of the debt. And if such surety should fail to sign his
name as such, then on his making it appear to the court in which such suit
was brought, that he was only a surety, and not interested in the considera-
tion of the debt, he shall have the control of the executions issued against his
cosureties, to the same extent and for the same purpose as is provided in
the foregoing part of this section.

452. Sec. IV. If separate suits are, or hereafter may, be brought in any
of the courts of this State, against the maker and endorsers of any promissory
note, and the debt is or may be collected of one of said endorsers, in that
event such endorser, for his reimbursement, shall have the control of the execu-
tion issued against the maker of the note, as well also as of the execution
obtained against any of the prior endorsers.

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

Surety against Principal.

**John Doe v. Richard Roe, John Doe v. Charles Smith**

_Fi. Fa. from Houston Superior Court, returnable to October Term, 1859._

Principal debt, $500 00.
Interest, $500 00.
Costs, $15 00.

It appearing to the Court here, that Charles Smith was security on the _Note_, the foundation of the above _fi. fas._, and in no way interested in the consideration of said _Note_. That separate actions were brought on said _Note_ against said Richard Roe, and said Charles Smith. That the _fi. fa._ against said Charles Smith has been paid off and discharged by said Charles Smith. It is therefore hereby ordered, that said Charles Smith have the control of the judgment rendered against said Richard Roe, and the execution issued therefrom, in said cause for the purpose of remunerating himself out of his property.

*James A. Pringle,*
*Attorney pro Charles Smith.*

Surety against Co-Security.

It appearing to the Court here, that Richard Roe and Charles Smith were Co-Securities on the _Note_, the foundation of the Plaintiff’s demand, and in no way interested in the consideration of said _Note_. That separate actions were brought against said Co-Securities. That Richard Roe, one of said Co-Securities, has paid off the said debt. It is therefore, hereby ordered, that said Richard Roe have the control of the Execution obtained in said cause, against said Charles Smith, for the purpose of collecting out of him his _pro rata_ part of said debt.

_An Act to give Endorsers the control of _fi. fas._ in all cases in which they may have paid them, against the principal or any prior Endorser._— _Approved March 1, 1856._

453. Sec. I. _Be it enacted, &c._, That hereafter in all cases in which the
principal or endorser or endorsers, may be sued in the same action, or in
Endorsers how reim-

bursed.
JUDICIARY.—EXECUTION, CONTROL, ETC.

which they may be sued in separate actions, and in which judgment may be obtained; and where any one of said endorsers may or shall pay off the fi. fa.; in any such case, the endorser so paying off the fi. fa. shall have the control of the fi. fa. or fi. fas. in any or either of the cases above-stated, for the purpose of remunerating himself out of the property of the principal or either of the prior endorsers. And where any subsequent endorser has collected the money out of any prior endorser, the prior endorser shall have the control of the fi. fa. in any of the cases above enumerated, to reimburse himself out of the principal, or any prior endorser to him.

Sec. II. [Repeals conflicting laws.]

An Act to authorize the issuing of Alias Executions, in vacation, by the several Courts of Law within this State, when the originals have been lost.—Approved Dec. 22, 1857.

454. Sec. I. Be it enacted, That from and after the passage of this act, whenever any execution, which shall have been regularly issued, out of any of the courts of this State, shall be lost, it shall and may be lawful for the judges of any of said courts, at any time in vacation, upon proper application being made, to grant orders for the issuing of alias executions, in all cases in which they may be required; upon the same terms and with the same restrictions, as are now prescribed for the issuing of the same in term-time.

455. Sec. II. That the provisions of this act, shall also extend to the different city-courts of this State.

Sec. III. [Repeals conflicting laws.]

An Act for the relief of Sureties, Endorsers and Guarantors, in certain cases therein mentioned.—Approved Dec. 21, 1857.

456. Sec. I. Be it enacted, That when any surety, endorser or guarantor, in any action against the principal or principals, and such surety, endorser or guarantor, shall pay the amount due to the plaintiff, pending such action, such payment shall not operate as, or be plead by the principal or principals, in bar of said action, but the said action may be continued in court, notwithstanding such payment, and be prosecuted to final judgment against the principal or principals, in the name of the plaintiff for the use of such surety, endorser or guarantor.

457. Sec. II. That in all cases of payment by an endorser or guarantor, pending the action, as provided in the foregoing section, where there are prior endorsers or guarantors, joined as parties defendants, said endorser or guarantor shall be entitled to prosecute the action to judgment, and control the same, when recorded, against such prior endorsers or guarantors, as well as against the principal or principals, as provided in the foregoing section.

458. Sec. III. That in all cases of payment by a surety, pending an action, where co-securities are joined as parties defendants, such surety shall be entitled to prosecute the same to judgment; and control said judgment, when recovered [recording] against his said co-securities, for their proportionable liability, of the debt or contract on which said judgment may be recovered, and of the costs of the action.

459. Sec. IV. That where any surety, endorser or guarantor, shall pay off and discharge any execution against the property of principal and surety, or principal endorser or guarantor, in such case, upon the return of said execution to office, with the return of "no property," by the levying-officer, such person so paying off the same, shall be subrogated to all the rights of the plaintiff.

An Act relative to the issuing of Executions.—Approved Dec. 11, 1858.

460. Sec. I. Be it enacted, that in all cases, after obtaining a verdict and
entering up judgment, plaintiffs may obtain, from the proper officer, execu-
tions on said judgments, upon application for the same. But if the same is
obtained before the expiration of the time allowed for appealing from said
verdict, the same may be superseded, by the defendant in fi. fa. entering his
appeal from said verdict, on the usual terms and conditions.

EXECUTORS AND ADMINISTRATORS.

461. 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 ex-
piration of twelve months after probate of the will of such testator, or
letters of administration, granted on the estate of such intestate.

462. 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 admin-
istrator 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 herein-before 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, immediately after
the expiration of twelve months, requiring such executor or administrator
to appear and answer to the said cause.

463. And where a feme sole being plaintiff shall marry pending any suit, Feme sole mar-
ning, suit not to abate.

Marriage of Feme Sole Plaintiff.

Jane Clifton

John Doe. Assumpsit, etc., October Term, 1859.

It appearing to the Court here, that the Plaintiff, Feme Sole at the
commencement of the above Action, has intermarried with Richard
Roe, it is therefore, ordered that said Action proceed in the name of
the husband and wife.

ATTORNEY AND SOLICITOR-GENERAL.

464. Sec. XXXVII. It shall be the duty of the States' attorney and
Duty of At-
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 the
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 in-
terested. And in case it should so happen that neither the States' attorney
or solicitors, or either of them, can attend the said courts, then the judge Court may ap-
point pro. tem.
presiding, may and he is hereby authorized and required, to appoint some attorney-at-law, to prepare and prosecute the indictments and other business of the State; and such person so appointed, shall be entitled to the same fees and emoluments therein, as the State's attorney or solicitors would have been entitled to.

An Act pointing out the mode of compelling the Attorney-General and the Solicitors-General of this State to pay over Moneys collected by them for the State.—Approved Dec. 23, 1826.

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

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

467. Sec. III. The judges of the superior courts shall have power to imprison, as for a contempt, such defaulting solicitor or attorney-general; and during such imprisonment said courts shall have power to appoint temporarily, some attorney to execute the duties of such delinquent solicitor or attorney-general.

An Act to compel the Attorney and Solicitors-General of this State, to give Bond and Security for the faithful discharge of the duties of their respective Offices. And to further define the duties of the Comptroller-General, the Attorney and Solicitors-General.—Approved Dec. 20, 1828.

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

469. Sec. II. It shall be the duty of the attorney-general and solicitors-general to make an annual report of the state and standing of the claims in favor of the State, under their control, to the comptroller-general, at the commencement of the session of the legislature, showing what suits are instituted, and when instituted, and what money may have been collected during the preceding year; also, on what cases collected.

470. Sec. III. It shall be the duty of the comptroller-general to report to the legislature at its annual session, all arrears or neglect of duty by the attorney-general, or either of the solicitors-general. Any law to the contrary notwithstanding.

Solicitor-General's Bond.

STATE OF GEORGIA, I We, Charles Smith, as principal, and John Doe and Richard Roe as securities, all of the County aforesaid, acknowledge ourselves held and bound to his Excellency
Joseph E. Brown, Governor of said State, for the time being, and his successors in office, in the sum of twenty thousand dollars, subject to the following condition—

The condition of the above obligation is this—whereas, the above bound Charles Smith has been elected Solicitor-General of the Coosawee District in said State: now, should the said Charles Smith, well and truly pay over to the Comptroller-General of said State, all Moneys collected by him as Solicitor-General of said District, or which may otherwise come into his hands, in behalf of said State, to which the State may be entitled. Also, the amount of all sums incurred by said Charles Smith, by reason of failure to pay over the same, according to the act of 1823. And do and perform all other duties required of him by law, then the above obligation to be void; otherwise, of force.

This May 1, 1859.

Approved—

JEB

Joseph E. Brown, Governor.

Charles Smith, prin'l. [L.S.]

John Doe, sec'ty. [L. S.]

Richard Roe, sec'ty. [L. S.]

An Act to make residence in the Judicial District a necessary qualification of the State's Attorney and Solicitors-General of this State.—Approved Jan. 17, 1850.

471. Sec. I. Be it enacted, That from and after the passage of this act, no person shall be eligible to the office of State's Attorney or Solicitor-General in any Judicial Circuit in this State, who has not been a resident of the District for one year immediately preceding the time of the election.

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

An Act for the Government of Solicitors-General in certain cases therein named, and to provide for the payment of the Fees of Witnesses.—Approved Feb. 16, 1854.

472. Sec. I. Be it enacted, That no Nolle Prosequi, or entry of settlement, in any criminal cause in the superior court, shall hereafter be consented to by the State's attorney or solicitors-general, where the prosecutor and defendant have agreed to settle; or where the State's attorney shall agree to a Nolle Prosequi, until all costs due to all the officers of court, and witnesses' fees, whether the witnesses have been sworn or not, shall be paid. And in all cases where the defendant pleads guilty upon an indictment or prosecution, he shall be liable in law for witnesses' fees, as though the witnesses had been sworn.

473. Sec. II. That it shall hereafter be the duty of the State's attorney Solicitor General and the several solicitors-general in this State, to settle with the county treasurer of each county within their respective circuits, at the fall term of the superior court of each county; and to render in a just and true return of all moneys which may have come into their hands during said year, belonging to said county; and to pay over to said treasurer all moneys which may be found in the said solicitor-general's hands, belonging to said county, after a just and fair settlement.

Sec. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

An Act to fix the time of holding Elections for Judges of the Superior Courts, Attorney-General and Solicitors-General.—Approved March 1, 1856.
Election of Judges, Attorney-General and Solicitors-General.

475. Sec. I. Be it enacted, That from and after the passage of this act, the regular elections of Judges of the Superior Courts, Attorney-General and Solicitors-General, shall be held on the first Monday in January.

Sec. II. [Repeals conflicting laws.]

An Act to elect the Attorney-General for the Middle Circuit, and the Solicitors-General for the respective Judicial Circuits of this State, by the people; and for other purposes therein named.—Approved March 5, 1856.

476. Sec. I. Be it enacted, That the attorney-general for the Middle circuit, and the solicitors-general for the several judicial circuits of this State, shall be elected by the people of the respective circuits entitled to vote for governor, members to congress and members to the legislature, under the same rules and regulations governing said elections.

477. Sec. II. That said elections are to take place on the days of general elections, to wit: on the first Mondays in January, immediately preceding the expiration of the term of office of the present incumbents, respectively. And said attorney-general and solicitors-general so elected, shall be commissioned by the governor, and hold their office for the space of four years from the date of said commissions.

478. Sec. III. That should any vacancy occur, it shall be the duty of his excellency the governor, to fill such vacancy by appointment, until the first Monday in January next after making said appointments. That his excellency shall issue his proclamation, and publish the same at least thirty days preceding said election. And the attorney and solicitors-general elected according to the provisions of this section, shall hold their office for the unexpired term only.

Sec. IV. [Repeals conflicting laws.]

An Act to authorize the settlement of Criminal Prosecutions, in certain cases. And to regulate, more particularly, the duties of the Attorney and Solicitors-General, and fix their liabilities.—Approved Feb. 22, 1850.

479. Sec. I. Be it enacted, That from and after the passage of this act, it shall and may be lawful, in all criminal offences against the person or property of a citizen, not punishable by fine and imprisonment, or by a more severe penalty, for the offender to settle the case with the prosecutor, upon the consent of the injured party being obtained, at any time before verdict.

480. Sec. II. Upon such settlement made, no more cost shall be required than has accrued up to the time of such settlement.

481. Sec. III. Upon bill found by a grand-jury, for any offence not embraced in the provisions of the first section of this act, the case shall not be settled without the consent of the prosecutor shown to the court; nor without the consent of the court, by order entered on the minutes.

482. Sec. IV. Any attorney or solicitor-general who shall demand or receive any fee or cost, on any criminal case which has not been tried by a petit jury, except such as are provided for in the first section of this act, shall be guilty of a misdemeanor, and on conviction, shall be punished by fine or imprisonment, at the discretion of the court.
SPECIAL POWERS OF SUPERIOR COURTS.

483. Sec. LIII. The Superior Courts in the several counties, shall exercise the powers of a Court of Equity in all cases where a common law remedy is not adequate to compel parties in any cause to discover on oath, all requisite points necessary to the investigation of truth and justice; to discover transactions between co-partners and co-executors; to compel distribution of intestate estates, and payment of legacies; to discover fraudulent transactions, for the benefit of creditors. And the proceedings in all such cases, shall be by bill, and such other proceedings as are usual in such cases, until the setting down of the cause for trial. And the courts shall order the proceedings in such manner as that the same shall be ready for trial at furthest, at the third term from the filing such bill, inclusive, [see 510,] 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—see 484] and a copy thereof served on the opposite party, at least thirty days before the filing of such bill in court, [see 509.] And the party against whom such bill shall be filed, shall appear and answer to the same, at the next court, (see 510,) and if he, she or they, shall fail to do so, the facts in the said bill shall be taken pro confesso, and the court may proceed to decree, as to justice shall appertain.

EQUITY FORMS.

Commencement and Conclusion of a Bill.

STATE OF GEORGIA, } To the Superior Court of said County, exercising
Houston County. } jurisdiction in Equity, in and for said County.

Respectfully complaining, showeth unto your honor, your Orator, (or Oratrix,) John Doe of said State and County, That [here state the charges, fully, particularly, and at length.]

Conclusion.—May it please your honor to grant unto your Orator, (or Oratrix,) the States' writ of Subpoena, to be directed to the said Richard Roe, thereby commanding him, at a certain day and under a certain pain therein to be limited and expressed, personally to be and appear before the Superior Court, to be held in and for said County on the fourth Monday in October next, and then and there, full, true, direct and perfect Answer make, to all and singular the premises. And further, to stand to, perform and abide such further order, Direction and Decree therein, as to said Court shall seem meet and proper. And your Orator (or Oratrix,) shall ever pray, etc.

JOHN M. GILES, Comple't's Sol'r.

Writ of Subpoena.

STATE OF GEORGIA, } To Richard Roe, of said County—Greeting,
Houston County. } For certain causes to us made known, by the
Bill of Complaint of John Doe, for Discovery and Relief, filed in the
Clerk's office of the Superior Court of said County, on the Chancery
side of said Court; in which said John Doe is complainant and you, the
said Richard Roe, are defendant, we command and strictly enjoin you,
that laying all business aside, and notwithstanding any excuse you
have, that you be and appear before us, at our Superior Court, to be held in and for said County, on the fourth Monday in October next, to Answer to all such matters and things as may, then and there, be objected against you. And to stand to and abide the further Order and Decree, then and there to be made in the premises.

Witness, the honorable Henry G. Lamar, Judge of said Court, this June 1, 1859.

WILLIAM H. MILLER, Clerk.

Demurrer.

JOHN DOE  
vs.  
RICHARD ROE.

Bill, etc. in Houston Superior Court.

Demurrer of the Defendant.

The Defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said Complainant's said Bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth Demur to said Bill, and for cause of Demurrer shows, [here set out the grounds of Demurrer.] Wherefore, and for divers other good causes of Demurrer appearing in said Bill, this Defendant doth Demur thereto, and prays the judgment of the Court, whether he shall be compelled to make any further and other Answer to the Bill. And he prays to be dismissed from hence, with his reasonable costs, in this behalf sustained.

JAMES A. PRINGLE, Def't's Sol'r.

Plea.

JOHN DOE  
vs.  
RICHARD ROE.

Bill, etc. in Houston Superior Court.

Plea of the Defendant.

The Defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said Complainant's said Bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth Plead thereunto, and for Plea saith, that [here set out the grounds of the Plea.] All which matters and things the Defendant doth aver to be true, and Pleads the same to the whole of the said Bill; and humbly demands the judgment of the Court, whether he ought to make any Answer to the said Bill of Complaint, and prays to be hence dismissed with his reasonable costs, in this behalf, most wrongfully sustained.

JAMES A. PRINGLE, Def't's Sol'r.

Disclaimer.

JOHN DOE  
vs.  
RICHARD ROE.

Bill, etc. in Houston Superior Court.

The Disclaimer of the Defendant.

The defendant saving and reserving to himself, now and at all times hereafter, all manner of advantage and benefit of exception that may be had and taken to the many uncertainties, insufficiencies and imperfections in the said Complainant's said Bill of Complaint contained, for a full and perfect Answer thereto, or to such part of it as it materially
concerns this Defendant to make Answer unto, he answereth and saith, that [here set out the grounds of Disclaimer.] And this Defendant doth deny all manner of unlawful combination and confederacy, unjustly charged against him in and by the said Complainant's said Bill of Complaint, material or necessary for this Defendant to Answer unto, confessed or avoided, traversed or denied, is true. All which matters and things this Defendant is ready to aver, maintain and prove, as the Court shall award; and prays to be hence dismissed with his reasonable costs and charges, in this behalf, most wrongfully sustained.

JAMES A. PRINGLE, Def't's Sol'r.

Commencement and conclusion of an Answer.

STATE OF GEORGIA, } The Answer of Richard Roe, Defendant, to the
Houston County. } Bill of Complaint of John Doe, Complainant.

This Defendant, now and at all times hereafter, reserving unto himself, all benefit and advantage of exception which can or may be had or taken, to the many errors, uncertainties and other imperfections in the said Complainant's said Bill of Complaint contained, for Answer thereunto, or unto so much and such parts thereof, as this Defendant is advised is or are material or necessary for him to make Answer unto, this Defendant answering saith, that [the Defendant, must Answer according to his knowledge, remembrance, information and belief, every material fact in the Bill.]

Conclusion.—And this Defendant denies all and all manner of unlawful combination and confederacy, wherewith he is, by the said Bill, charged; without this, that there is any other matter, cause or thing, in the said Complainant's said Bill of Complaint contained, material or necessary for this Defendant to make Answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of this Defendant. All which matters and things this Defendant is ready and willing to aver, maintain and prove, as the Court shall direct; and prays to be hence dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained.

JAMES A. PRINGLE, Def't's Sol'r.

Oath of the Defendant to his Answer.

"You, A B, do solemnly swear, (or solemnly, sincerely and truly declare and affirm, as the case may be,) that what is contained in your Answer, as far as concerns your own act or deed, is true of your own knowledge; and that which relates to the act or deed of any other persons, you believe to be true."

Sworn to and subscribed, before me, this May 1, 1859.  
James Mack, J. P.

Richard Roe.

An Act to repeal a part of an act entitled "an act to revive [revise] and amend the Judiciary System of this State, passed on the 16th day of Feb., 1799.—Approved Dec. 24, 1827.  
484. So much of the said above-mentioned act as requires the judges of the
An Act to authorize the Judges of the Superior Courts of this State, to appoint Receivers during vacation. And to require the Complainant, in all cases, asking for writs of Ne Exeat, Quia Timet, and all applications asking for the appointment of a Receiver, or for Injunction, to give Bond and Security to the Respondent, for any loss or damage which he or they may sustain by the suing out of said Writs. And for other purposes.—Approved March 4, 1856.

485. Sec. I. Be it enacted, That from and after the passage of this act, the judges of the superior courts, in this State, shall have power and authority to appoint receivers, in vacation, upon such a case made as will now, by law, authorize the appointing of the same, in term-time.

486. Sec. II. That before any writ of injunction, ne exeat, quia timet, or any writ appointing a receiver, shall hereafter be issued by the judges of the superior courts of this State, or by the court, the complainant shall give bond and security to the respondent, fully to respond to any damage which the respondent may sustain, by reason of the issuing of said writs, or the appointment of the said receiver.—[See 487.]

Complainant's Bond.

STATE OF GEORGIA, } We, John Doe as principal, and Richard Roe as
Houston County. } security, both of the County and State aforesaid,
acknowledge ourselves held and bound to Charles Smith, of the County
and State aforesaid, in the sum of one thousand dollars; subject to the
following condition—

The condition of the above obligation is as follows:—Whereas, said
John Doe has filed his Bill of Complaint, against said Charles Smith,
in the Clerk's Office of the Superior Court of said County, returnable
to the October Term of said Court, next ensuing. In which Bill of
Complaint said John Doe prays the issuing of the States' Writ of
Injunction; now, should the said John Doe, fully respond to any dam-
age which the said Charles Smith may sustain, by reason of the issuing
of the said Writ of Injunction, then this above obligation to be void;
otherwise of force. This May 1, 1859.

Attest—
James Mack, J. P.

John Doe, prin'cal. [L. S.]
Richard Roe, sec'y. [L. S.]

An Act to amend an act entitled "an act to authorize the Judges of the
Superior Courts of this State, to appoint Receivers, during vacation.
And to require the Complainant, in all cases asking for Writs of Ne
Exeat, Quia Timet, and all applications asking for the appointment of
a Receiver, or for Injunction, to give Bond and Security to the Respond-
ent, for any loss or damage which he or they may sustain by the suing
out of said Writs; and for other purposes," approved March 4th, 1856;
so as to allow the issuing any of the aforesaid Writs, upon the applicant
making oath, that from his poverty, he is unable to give such Bond and

487. Sec. I. That said act be so amended that any of the writs therein
mentioned, shall issue upon complainant attaching to his bill an affidavit,
that he is advised and believes that he has a good and legal cause of action,
and that from his poverty, he is unable to give the bond and security required by such act.

Sec. II. [Repeals conflicting laws.]

Affidavit of Complainant.

STATE OF GEORGIA, 

In person appeared before the undersigned,

Houston County, 

John Doe, Complainant in the foregoing Bill, who being sworn saith, that from his poverty, he is unable to give the Bond and Security, required in cases of Injunction, and therefore prays, the issuing of the State's Writ of Injunction, without Bond and Security.

Sworn to and subscribed, before me, this May 1, 1859.

John Doe.

Sanction of the Judge.

In Chambers, May 1, 1859.

The undersigned, having read and sanctioned,—Let the State's Writ of Injunction issue; directed to the Defendant, his Confederates, Servants and Agents, each in the sum of ten thousand dollars, according to the prayer of the Bill. And let such other proceedings, as are usual and necessary, in Equity, be had.

Witness my hand and official signature.

Henry G. Lamar, J. S. C. M. C.

Writ of Injunction.

STATE OF GEORGIA, 

To Richard Roe, his Confederates, Servants and Agents.—Whereas, John Doe has preferred his Bill of Complaint, against you, returnable to the October Term, eighteen hundred and fifty-nine, of the Superior Court of said County, showing that [here state briefly but accurately, the substance of the Bill.] And whereas, the said John Doe, by his said Bill, prays the issuing of the State's Writ of Injunction, to be, forthwith, issued, to stay [here state the object of the Injunction.] And the said John Doe, having verified the facts and statements of said Bill, on oath. And said Bill having been read and sanctioned by the Judge of said Court; therefore, you, the said Richard Roe, and all and every, the persons before mentioned, are hereby commanded and strictly enjoined, that you and every of you, do from henceforth, altogether and absolutely desist from [here state the object of the Injunction.] until said Superior Court shall make further Order to the contrary.

To the Sheriff of the County of Houston.—You are hereby commanded to give notice hereof to the said Richard Roe, and all the persons before mentioned, by leaving a true and attested copy of the foregoing Writ, with the said Richard Roe, and the other persons above mentioned; and by requiring the said Richard Roe, and other persons, each, to enter into Bond, payable to said John Doe, with good security, in the sum of ten thousand dollars, to observe and abide by the conditions and requirements of the foregoing Order. Fail not, &c., and make return
of this Writ to the Superior Court, to be held in and for said County, on the fourth Monday in October next.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 2, 1859.

WILLIAM H. MILLER, Clerk.

Writ of Ne Exeat.

STATE OF GEORGIA,)

To the Sheriff of said County—Greeting:

Whereas, John Doe has filed his Bill of Complaint, against Richard Roe, of said County, in the Superior Court of said County, returnable to the October Term of said Court; which Bill is verified by the oath of said John Doe; and which Bill has been read and sanctioned by the Judge of said Court. In which Bill it is made known, that [here state briefly, but accurately, the substance of the Bill.]

And whereas, said John Doe, by his said Bill, prays the issuing of the State's Writ of Ne Exeat, directed to said Richard Roe, commanding and requiring him, not to remove beyond the jurisdictional limits of said Court; therefore, you the said Sheriff, are hereby commanded, in the name of the State of Georgia, to arrest him, the said Richard Roe, and he being arrested, safely and securely to keep, in your custody, until he shall enter into Bond with good and ample security, in the said County of Houston, in the sum of one thousand dollars, payable to the said John Doe, conditioned that the said Richard Roe will not remove beyond the jurisdictional limits of the Superior Court of the County of Houston, without the Order and permission of said Court. And in case of the neglect or refusal of the said Richard Roe, to enter into the said Bond and security, as aforesaid, you are hereby commanded and authorized, to confine the said Richard Roe, in the common jail of said County of Houston, or some other secure place, there to remain, without bail or mainprize, until the further Order of the said Court, in the premises. And you are further commanded to give notice hereof, to the said Richard Roe, by serving on him personally, a true and attested copy of the foregoing Writ. Fail not, &c., and make return of this Writ, to the Superior Court to be held in and for the County aforesaid, on the fourth Monday in October next.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 3, 1859.

WILLIAM H. MILLER, Clerk.

Quia Timet.

STATE OF GEORGIA,)

To the Sheriff of said County.

Bill Quia Timet, &c.

vs.

In Houston Superior Court.

RICHARD ROE.

To John L. Halstead, Sheriff of said County.

Whereas, the Complainant in the above Bill, (which is verified by the oath of the Complainant,) has presented the same to the honorable Henry G. Lamar, Judge of the Superior Courts of the Macon Circuit,
by whom said Bill has been read and sanctioned. And whereas, said John Doe, in said Bill has prayed the issuing of a Quia Timet, in conformity to law, to stay and prevent all the wrongs and injuries, in said Bill, complained of. You are, therefore, hereby commanded, to arrest the body of the said Richard Roe, and him safely and securely keep in your custody, until he shall enter into Bond with good security, payable to the Complainant, in the sum of five thousand dollars, conditioned that he will not [here state the object of the Quia Timet.] And return the said Bond to the Superior Court, to be held in and for said County, on the fourth Monday in October next, together with this precept, with your acts and doings thereon. Herein fail not.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 1, 1859.

William H. Miller, Clerk.

An Act to authorize any one Distributee or person interested in an Estate, to institute proceedings in Equity, without joining as Complainants or making Respondents, other Distributees, residing in the jurisdiction of the Court.—Approved Dec. 29, 1836.

488. From and after the passage of this act, it shall and may be lawful for any one distributee or person interested in any estate, to institute his or her bill or other proceeding in equity to compel an account or distribution of an estate, without joining as complainants or making respondents, the other distributees or persons having an interest in said estate, residing within the jurisdiction of the court: Provided however, it shall be the duty of such complainant, to state in his or her bill or other equitable proceeding, the names of all the distributees or persons having an interest in said estate, that the court may be enabled to ascertain the amount of the distributive share to which said complainant is entitled, as nearly as practicable.

An Act to regulate the Publication of Rules, Writs, Bills, Orders and Precepts of Court, relative to cases in Equity; to fix the Cost thereof, and to amend certain defects, &c.—Approved Dec. 29, 1838.

489. Sec. I. When service of any process, writ, bill, order or rule of court, relating to cases in equity, shall be required to be made by publication in any of the public gazettes of this State, the publication of the same, as aforesaid, once a month for four months, shall be deemed, held and taken to be sufficient; and the clerk shall receive for such publication, the sum of five dollars.

Sec. IV. [Repealing section.]

An Act to regulate proceedings in Equity.—Approved Dec. 23, 1839.

490. Sec. I. Be it enacted, That when a complaining party seeks through a court of equity, the specific performance of an agreement to convey land, and a jury shall find in favor of the complaining party, it shall be the duty of the court to cause the description of the land to be set forth in the judgment of the court, and signed by the attorney of the complainant; which judgment shall be entered on the records of the court, if for land, and shall be recorded in the county where the land lies. Which judgment and decree shall pass the title, without any act to be done by the defendant. And such judgment or decree having been
recorded, shall be as effectual to transfer the property as the deed of the defendant: (Provided, that the said judgment or judgments shall not affect any person except the party or parties to said bill, further than the deed of the defendants would have done, if executed in pursuance of said decree.) And as decisive of the title as if the complainant had recovered in ejectment. And a writ of possession shall issue, as in case of a recovery in ejectment, when the defendant to the bill is in possession.

An Act to amend an act entitled "an act to amend an act entitled an act to revise and amend the Judiciary System of this State." And also to amend an act entitled "an act to alter and amend the sixth section of the Judiciary Act of this State, passed in the year 1799," so far as relates to the Notices provided for in said section. And to prescribe the mode of issuing Scire Facias therein provided for.—Approved Jan. 29, 1850.

491. Sec. I. Be it enacted, That the provisions of the above-mentioned acts, in relation to producing books, writings, papers, &c. shall extend to and embrace any other causes: Provided, that nothing herein contained shall be construed to restrain the powers of courts of equity, to effect the same object by other means.

An Act declaratory of the law of this State relating to Appeals in the Superior Courts.—Approved Dec. 27, 1843.

492. Sec. I. Be it enacted, That in all cases hereafter to be tried in the superior courts of this State, on the equity side thereof, either party who may be dissatisfied with the verdict of the jury, may enter an appeal in like manner and under the same limitations and conditions as are prescribed in cases at common law; which appeal shall be tried by a special jury, under the provisions governing common law cases.

An Act to authorize the Judges of the Superior Courts to grant Writs of Ne Exeat in certain cases therein mentioned.—Approved Dec. 6, 1813.

Whereas, great evils have existed and do yet exist in this State, in consequence of the law of England regulating writs of Ne Exeat not having provided for cases where the demand set forth by the Complainant is not due. And whereas, no provision is made for cases of Joint-Obligors, or Joint and several Obligors, when part of them remove or are about removing without the jurisdictional limits of this State, without making satisfaction to the Obligee, or to the other Obligor or Obligors; by reason whereof, the payment of the debt devolves on the Obligor or Obligors who remain within the State, and that too, without the possibility of compelling the Obligors or Obligor removing, to pay or secure the payment of their proportionable part to the Obligee, or the complaining Obligors; for remedy whereof—

493. Sec. I. Be it enacted, That from and after the passage of this act, the judges of the superior courts shall, and they are hereby authorized, to grant writs of ne exeat, as well in cases where the debt or demand is not actually due, but exists fairly and bona fide in expectancy, at the time of making application, as in cases where the demand is due. And all the proceedings shall be as heretofore practised in this State, in restraining the person and property of the defendant, until he secures to the complainant the payment of the demand, or shows good cause to the court why he should not pay the same. All other proceedings to be in the same way as practised under this writ in other cases.—[See 498.]
494. Sec. II. In case of joint or joint and several obligors, if any one or more of them are about to remove without the jurisdictional limits of this State, and are carrying off their property, leaving one or more fellow-obligors bound with them, for the payment of any debt, penalty, or for the delivery of property at a certain time, which time has not arrived at the time of such removal, such obligor or obligors who remain, shall have the benefit of the writ of \( ne \ exeat \), to compel the removing obligor to secure the payment of his part of the debt, penalty, or of the delivery of the property. And also, in cases of security, the security shall have all the benefit of the writ of \( ne \ exeat \) against his principal or fellow-security, where the obligation or debt is not yet due, and the principal or either of the securities are about removing without the State: Provided nevertheless, that in all cases arising under this act, the party complaining shall pursue the legal form and course of law, as heretofore practised in this State. Anything herein contained to the contrary notwithstanding.

An Act to authorize the several Courts of Equity in this State, to grant remedies in certain cases. And to regulate the Courts of Law and Equity in this State, &c.—Approved Nov. 23, 1814.

495. Sec. I. Where any person or persons has or shall run out of this State, the property of a deceased person or persons, to the injury of the orphans of said deceased; or to the injury of the next of kin, entitled to the same, it shall and may be lawful for the judges of the several courts of equity in this State, upon application and the facts being stated, on oath made to the truth thereof; and also, the property being described, and its value sworn to, by the person or persons entitled to said estate, his, her or their agent or attorney, to give the party a remedy, either by arresting the defendant, or taking his property, or both, as the court in its discretion, shall deem necessary and proper: Provided always, that the judge granting the same, shall take good security of the party, his, her or their agent or attorney, in double the amount sworn to, to make good all costs and damages the defendant shall sustain, if the plaintiff shall discontinue or be cast in said suit.

496. Sec. II. The defendant if arrested, and his property also, if taken, shall be discharged and returned to him, on his giving good security to perform the order and decree of the court.

497. Sec. III. If the defendant fails, or neglects, or refuses to give such security, the court may make such disposition of the property as in its discretion it shall deem most advantageous to the parties on both sides.

Bond given by the Plaintiff.

STATE OF GEORGIA, 
Houston County.  
We, John Doe, as principal, and Richard Roe, as security, both of said State and County, acknowledge ourselves held and bound to Charles Smith, of the same place, in the sum of ten thousand dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said John Doe, next friend of William Jones and Jane Jones, orphans of John Jones, deceased, late of said County and State, has filed his Bill of Complaint in the Superior Court of said County, against said Charles Smith, charging said Charles Smith with having run out of this State, certain property in said Bill of Complaint described, (valued in said Bill of Complaint, at the sum of five thousand dollars,) belonging to the Estate of said John Jones, and to which said Orphans are entitled: Joint-Obligor may have \( ne \ exeat \) against Fellow-Obligor.

Security may have the like remedy.

Judge to give remedy ag'st persons running off Orphan's property.

Defendant may give Security.

If Defendant fails, what may be done.
now, should the said John Doe make good all costs and damages the
said Charles Smith shall sustain in consequence of said proceedings,
provided said John Doe shall discontinue or be cast in his said suit,
then the above obligation to be void; otherwise, of force. This May
1, 1859.

Attest—
James Mack, J. P.  
John Doe, principal, [L. S.]
Richard Roe, security, [L. S.]

Bond given by the Defendant.

STATE OF GEORGIA, 
We, Charles Smith, as principal, and John Fox, 
Houston County, 
as security, both of the County and State afore-
said, acknowledge ourselves held and bound to John Doe, next friend 
of William Jones and Jane Jones, Orphans of John Jones, deceased, late 
of said County, in the sum of ten thousand dollars, subject to the fol-
lowing condition—
The condition of the above obligation is as follows—whereas, John 
Doe, as the next friend of William Jones and Jane Jones, Orphans of John 
Jones, deceased, late of said County, has exhibited in the Superior 
Court of said County, his Bill of Complaint against the said Charles 
Smith, charging him with having run out of said State, certain property
in said Bill of Complaint mentioned, of the value of five thousand dol-
liers, belonging to the Estate of said John Jones, deceased, and to which
said Orphans are entitled. And whereas, said Charles Smith has been
arrested by virtue of an Order to said Bill of Complaint annexed, by
the honorable Henry G. Lamar, Judge of said Court: now, should the
said Charles Smith, well and truly, do and perform, the Order and
Decree of the Court in the premises, then this obligation to be void;
otherwise, of force. This May 1, 1859.

Attest—
James Mack, J. P.  
Charles Smith, principal, [L. S.]
John Fox, security, [L. S.]

An Act to prescribe the mode of proceeding under Writs of Ne Exeat,
and to amend the laws regulating the granting of Writs of Injunction
by the judges of the Superior Courts of this State.—Approved Dec. 22,
1830.

In all cases where persons may be hereafter arrested by virtue of
writs of ne exeat, they shall be discharged on their giving bond with good
and sufficient security, either that they will not depart this State, or for
the payment of the eventual condemnation money.

SEC. II. In all cases in equity, when the judge of any circuit may
be a party to such suit; or when the complainant will and shall make an
affidavit, that the judge of the circuit where the cause is pending or to be in-
stituted, is interested in the subject-matter of such cause in equity, it shall
and may be lawful for any judge of the superior courts of this State, to
sanction such bills in equity, and grant such writs of injunction and others,
as may be according to law, to affect the object of such bills.

Affidavit of the Complainant.

STATE OF GEORGIA, 
In person appeared before the undersigned,
Houston County.  
Charles Smith, Complainant in the within Bill of Complaint, who after being sworn, saith that honorable Henry G.
JUDICIARY.—CHANCERY.

Lamar, Judge of the Superior Courts of the Macon Circuit, is interested in the subject matter, in the said Bill of Complaint mentioned, and which is now pending in the Superior Court of the County aforesaid.

Sworn to and subscribed, before me, this May 1, 1859.

James Mack, J. P.

Charles Smith.

Bond of Defendant in Ne Exeat.

STATE OF GEORGIA, We, John Doe as principal, and Richard Roe as
Houston County. security, acknowledge ourselves held and bound to Charles Smith, of the County and State aforesaid, in the sum of two thousand dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said John Doe has been arrested by virtue of a Writ of Ne Exeat, (issued in favor of said Charles Smith, and annexed to his Bill of Complaint, returnable to the Superior Court of said County,) which writ of Ne Exeat is for the sum of one thousand dollars, requiring the said John Doe not to remove beyond the jurisdictional limits of this State; now, if the said John Doe (shall not depart this State until the final order of said Court,) then this obligation to be void; otherwise of force. This May 1, 1859.

Attest—

James Mack, J. P.

John Doe, principal. [L. S.]

Richard Roe, security. [L. S.]

An Act to authorize the issuing of Writs of Ne Exeat at the instance of persons claiming personal property in Remainder and Reversion, and to preserve the rights of such persons.—Approved Dec. 23, 1830.

500. It shall and may be lawful for any judge of the superior courts of this State, on application to him by bill at the instance of any person or persons claiming personal property in remainder and reversion, to grant a writ of ne exeat, or other sufficient process, to restrain the person or persons having the control or possession of such property, from removing the same beyond the limits of this State. Or to give good and sufficient security, residing in the county, to the party claiming, in a sufficient penalty, to be fixed by such judge, that the property shall be subject and accessible to the demand of the person or persons entitled thereto, in the county wherein such property may be at the time of issuing such writ: Provided, that the person or persons, or one of them, suing for the benefit of such writ, shall make affidavit of his, her or their right to, and of the value of the property in question. And that he, she or they, entertain serious apprehensions, that the property will be removed beyond the limits of this State; and that his, her or their rights will be impaired, unless a remedy be afforded for the preservation thereof.

501. Sec. II. The superior court shall, at the term to which such writ and bond may be returnable, and at any subsequent term, on exceptions to the sufficiency of the bond or of the security, or on a representation on oath, that the securities, or some of them, have removed or are about to remove from the county, determine thereon, and may in its discretion, require a new bond or additional security, for the preservation of the property in controversy. And may pursue such course therein, and in the matter of said bill, as to justice may seem proper.
JUDICIARY.—CHANCERY.

Affidavit of Remainder-man.

STATE OF GEORGIA.  

In person appeared before the undersigned, Cha's. Smith, who after being sworn, saith that he is Remainder-man of the property in the within Bill of Complaint described and set forth; that John Doe is entitled to a present interest, (a life estate,) in said property, and has the possession thereof; that said property is of the value of one thousand dollars. And the said Charles Smith further swears, that he entertains serious apprehensions that the said property will be removed beyond the limits of this State, and that thereby his rights in said property will be impaired.

Sworn to and subscribed, before me, this May 1, 1859.

Charles Smith.

Bond of Person in Possession.

STATE OF GEORGIA.  

We, John Doe as principal, and Richard Roe as security, both of the State and County aforesaid, acknowledge ourselves held and bound to Charles Smith, of the same place, in the sum of two thousand dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said Charles Smith, has filed in the Superior Court of said County, his Bill of Complaint against said John Doe, (to which has been annexed the writ of Ne Exeat,) whereby said Charles Smith claims as Remainder-man certain property in said Bill of Complaint mentioned, (which property is now in the possession of said John Doe, who has a life interest therein,) and which property is valued in said Bill of Complaint, at the sum of one thousand dollars: now, should the said John Doe, well and truly, keep said property in said Bill of Complaint mentioned, subject and accessible to the demand of said Charles Smith, Remainder-man, as aforesaid, (or not remove said property beyond the limits of this State, as the case may be,) then the above obligation to be void; otherwise of force. This May 1, 1859,

Attest,—

James Mack, J. P.

John Doe, principal. [L. S.]

Richard Roe, security. [L. S.]

An Act to provide for taking the Answers of Parties to Suits, in this State, when such Parties reside without the limits of this State. And for other purposes.—Approved Feb. 17, 1854.

502. Sec. I. Be it enacted, That whenever any party to any bill in chancery or suit at common law, now pending, or which may hereafter be commenced in any of the courts of this State, now resides or shall reside without the limits of this State, but in one of the States or Territories of the United States, and it shall be necessary or proper for such party to make answer under oath, to a bill in chancery or to interrogatories filed under the several acts of this State, to compel discoveries at common law, or to respond to any notice to produce deeds or other documents in writing, it shall and may be lawful for such party to make oath to such answer or response, before any officer of the State or Territory in which such party resides or shall reside; and where such affidavit shall be made [before any officer] duly authorized by the laws of said State or Territory to administer oaths; and that the official signature and attestation of the officer administering the oath to such party, shall be sufficient evidence of he said affidavit having been made as it shall purport to have been made;
and the same shall be received in evidence in the courts of this State, in
the same manner and to the same extent as if the same had been made
before some officer of like character of this State: Provided, that the
official character of the officer attesting said affidavit, shall be properly
proved by a certificate of the governor, the secretary of State, the chanc-
elor or keeper of the great seal of the State or Territory in which such
affidavit shall be made, or in the manner now prescribed by law, for pro-
voking the official character of magistrates attesting the affidavits of witnesses
to deeds, where such affidavits are made without the limits of this State.

An Act declaratory of the fifty-third section of an act, entitled "an act to
amend an act, entitled an act to revise and amend the Judiciary of this
State, passed 16th February, 1799."—Approved Dec. 21, 1820.

Whereas, the said recited section is in the words following, to wit:
"That the Superior Courts in the several counties shall exercise the powers
of a Court of Equity, in all cases where a common-law remedy is not ade-
quate 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 trans-
actions, for the benefit of creditors. And the proceedings in all such
cases, shall be by bill, and such other proceedings as are usual in such cases,
until the setting down of the cause for trial. And the courts shall order the
proceedings in such manner as that the same shall be ready for trial
at furthest, at the third term from the filing such bill inclusive, unless very
special cause be shown to induce the court to continue the same, which
shall not extend to more than four terms. And all such bills shall be read
and sanctioned by one of the judges, and a copy thereof served on the
opposite party, at least thirty days before the filing of such bill in court.

And the party against whom such bill shall be filed, shall appear and an-
swer to the same at the next court; and if he, she or they, shall fail to do
so, the facts in the said bill shall be taken pro confesso; and the court may
proceed to decree as to justice shall appertain. And whereas, under the
construction of the said recited section, the equity side of the court has
drawn to itself exclusively, all cognizance of the cases in said section enu-
merated, even when such cases depend upon aliunde proof, to the manifest
embarrassment of justice in many cases, to the injury of the good citizens
of this State; for remedy whereof—

503. Be it enacted, That from and after the passing of this act, whenever
[in] any of the cases enumerated in the before-recited section, a plaintiff
or complainant shall conceive that he, she or they, can establish his, her or
their claim, without resorting to the conscience of the defendant, it shall
and may be lawful for every such plaintiff or complainant to institute his,
her or their action upon the common-law side of the court, and shall not
be held to proceed with the forms of equity. Any law or usage to the
contrary notwithstanding.

504. Sec. II. All parties in any of the cases mentioned in the before-
recited section, after the commencement of the action at common-law,
may, during the progress of said suit, file his, her or their bill for the dis-
covery of testimony in aid or defence of his, her or their common-law
action, in all cases where the same may be necessary.

An Act to provide for the speedy trial of certain cases in Courts of Law
and Equity in this State, and for other purposes connected therewith.—
Approved March 6, 1856.

505. Sec. I. Be it enacted, That all actions at law, or suits in chancery,
All the members of a company need not be made parties.

How far judgment extends.

Chancellor may pass certain Orders and Decrees in Chambers.

Clerk must record them.

An Act to authorize the Judges of the Superior Courts as Chancellors, to make certain Orders and Decrees.—Approved Feb. 20, 1854.

An Act to amend an act for the better protection and security of Orphans and their Estates, approved February 18th, 1799, by extending the provisions of the fifth section thereof to Trustees and their estates.—Approved Feb. 10, 1854.

An Act to alter and amend the practice in Courts of Equity, in this State; and to speed causes therein; and prevent delays of Justice.—Approved Dec. 22, 1857.
509. Sec. I. Be it enacted, That bills shall be served on the defendant, at least, thirty days before the term of the court to which the bill is returnable.

510. Sec. II. That all equity causes shall stand for trial at the second term of the court, from the filing of the bill, and service thereon on defendant or defendants.

511. Sec. III. That it shall not, hereafter, be necessary to file replication, or take any order, setting down a case for trial, as now practised in this State; but, upon service on defendants, plaintiff may, at once, proceed to prepare his case for trial.

512. Sec. IV. That at the first term of the Court, the defendant may plead, answer, or demur, and if a demurrer, or plea, is filed, the said plea or demurrer, or both, shall be tried and disposed of, at the first term of the court to which the bill is returnable; and if overruled, defendant shall file his answer within thirty days from the time of the judgment on such demurrer or plea; and if such answer is not full, exceptions may be taken thereto; and on ten days' notice, may be argued and disposed of, in vacation; and defendant required to answer fully, at such time and on such terms as the judge may order or direct.

513. Sec. V. That defendant, if in his judgment he has an equitable defence, shall not be forced, or obliged, to file a cross-bill, but may set up such equitable defence in his answer, and pray for and obtain such relief, as he may be entitled to upon the principles of justice, in as full and ample a manner as he would now be entitled to under a cross-bill. And may, if he desires it in writing, in his answer, compel an answer from plaintiff, at such time and upon such terms as the court may order and direct.

514. Sec. VI. That either party may examine, in open court, the opposite party, on the stand, as a witness, notwithstanding the answer may be filed, upon serving such party with subpoena, as now provided by law, when such party resides in the county where the trial is had; and if such party resides out of the county, may sue out commission and examine such party, as now provided by law. And if the party is in court, at the time of trial, he may be examined without having been served with subpoena.

515. Sec. VII. That plaintiffs may amend, at any time, and defendants shall have reasonable time to answer such amendment; but, making an amendment shall not open the whole case to demurrer, unless the amendment makes a new bill: Provided however, plaintiffs shall not, capriciously, amend his pleadings, for the purpose of delay only.

516. Sec. VIII. That defendants shall only be required, when an amendment is made, to answer such amendment; but, if the amendment is merely formal, the answer may be waived, and the cause proceed. If the amendment formal amendment is one of substance, and not of form merely, the defendant shall have reasonable time to answer such amendment, as the court may order and direct.

517. Sec. IX. That courts of justice, in construing this act, shall give it a reasonable interpretation, to speed the trial of equity causes, allowing reasonable time for defendants, and discouraging any unnecessary delay; and no right shall be defeated or prejudiced, on account of mere technicality of form, not affecting the real justice and merits of the case.

518. Sec. X. That this act shall not extend to, or be applicable to any case now pending, or any case which may be filed and served before the first day of April next.

Sec. XI. [Repeals conflicting laws.]

An Act for the appointment of Auditors, in certain cases.—Approved Dec. 13, 1858.
Auditor may be appointed in term-time or vacation.

He must Report.

Cost of Auditor, how paid.

519. That in all cases now pending on the equity side of the superior courts, or which may be hereafter brought, involving matters of account, and which cannot be properly investigated by a jury, either party to such case may, upon application to the superior court, when in session, or to the presiding judge thereof, in vacation, have an auditor appointed by said court or judge, to investigate the matters of account, ascertain how they stand and report the result thereof, with a full and clear statement of the whole, to the court. Which report shall, under the direction of the court, be submitted as evidence to the jury, but not to be conclusive on either party. And the whole cost of preparing said report, to be settled by the court, and paid for by the person applying for the report, unless the court, by its judgment, shall decide that other parties to the case, shall pay the whole or a part of the same; the said court being hereby authorized to so decide, and to proportion the part to be paid, and to settle the whole of said expense, according to justice.

CERTIORARI AND INJUNCTION.

520. Sec. LIV. Where either party in any cause in any inferior court shall take exceptions to any proceedings in any cause affecting the real merits of such cause, the party making the same shall offer such exceptions in writing, which shall be signed by himself or his attorney, and if the same shall be overruled by the court, it shall and may be lawful for such party, on giving twenty days' notice to the opposite party or his attorney, to apply to one of the judges of the superior court, and if such judge shall deem the said exceptions to be sufficient, he shall forthwith issue a Writ of Certiorari directed to the clerk of such inferior court, requiring him to certify and send up to the next superior court to be held in the said county, all the proceedings in the said cause. And at the term of the superior court to which such proceedings shall be certified, the said superior court shall determine thereon, and order the proceedings to be dismissed, or return the same to the said inferior court, with order to proceed in the said cause.

 Exceptions Presented to the Court.

JOHN DOE } GEORGIA—HOUSTON COUNTY.

vs. RICHARD ROE. } January Term, 1859. Assumpsit in the Inferior Court, and Verdict for the Plaintiff.

And now comes the Defendant, by his Attorney, James A. Pringle, and Excepts to the proceedings in the above-stated cause, and for cause of Exception, says—first, Because the Court decided contrary to law, in this, to wit—[here set out fully and distinctly the Error complained of.]

JAMES A. PRINGLE, Def't's Atty.

Presented to and overruled by the Court.

JOHN D. WINN, J. I. C.
WILLIAM T. SWIFT, J. I. C.
WM. F. POSTELL, J. I. C.

Note.—There is no other way of objecting to a Decision of the Inferior Court, and having it reviewed, but by Certiorari, founded on Exceptions. From a Verdict an appeal is allowed, but not from a Decision of the Court.
Notice to the Opposite Party.

JOHN DOE Assumpsit in Houston Inferior Court. To the Defendant in the Case.

RICHARD ROE You are hereby notified that I shall apply to the honorable Henry G. Lamar, Judge of the Superior Court of the Macon Circuit, within the time prescribed by law, for a Writ of Certiorari, in the above case. This January 3, 1859.

JAMES A. PRINGLE, Def't's Att'y.

An Act to regulate the granting Certioraries and Injunctions in this State.

—Approved Dec. 16, 1811.

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

522. Sec. II. The person applying for said certiorari shall produce to the judge authorized to grant the same, a certificate from the magistrate or magistrates, or justices of the inferior court who tried the case, or clerk of the inferior court, whose duty it shall be to give said certificate, informing said judge that the costs have been paid, and security given, in terms of this act.

523. Sec. III. No injunction shall be sanctioned or granted by any judge of the superior courts of this State, until the party requiring the same shall have previously given to the party against whom such injunction is to operate, by application to the clerk of the superior court for that purpose, a bond with good and ample security for the eventual condemnation money, together with all future costs. Which said bond shall be lodged in said clerk's office, subject to the order of the court, and have paid all costs which may have accrued in the case, the subject of the injunction.

524. Sec. IV. Where any doubt arises as to the sufficiency of the security tendered to any of the persons, authorized by this act to take the same, the party so authorized to take the said security, may compel the party to justify upon oath, and such justification upon oath shall amount to such sufficiency as to exonerate the party taking the security, from any liability.

525. Sec. V. No judge of the superior court shall grant or sanction any certiorari [see 532] or injunction out of his judicial district, unless there shall be a vacancy in any of the other districts, or the judge thereof be so indisposed, or be absent therefrom, so that the business of granting certioraries and injunctions cannot be speedily done.

526. Sec. VI. In all cases of bills of injunction, where the defendant or defendants reside out of the State, a service on the attorney of the plaintiff in the original action, and a publication of a six months' rule, obtained from the judge granting the injunction, shall be deemed a sufficient service.

527. Sec. VII. All bills of injunction granted by the superior court, or any of them; or which may hereafter be granted, shall stand and be considered as open for argument and amendment, at the first term of the...
superior court which may be holden after the passing of this act, in and for the county where the suit originated, or the first term after the granting such bill of injunction. And in all cases of injunction, they shall be disposed of and a decision made, at the second term of said court, held in and for the county where such suit originated. Any law to the contrary notwithstanding.

528. Sec. VIII. The dilatory practice of granting bills of injunction a second time, after the dissolution of the first bill or bills, shall not be admissible or allowed of in any case or cases whatever.—[See next Act.]

An Act to repeal so much of the fifth section of an act passed on the 16th Dec. 1811, entitled "an act to regulate the granting of Certioraries and Injunctions in this State," so far as relates to Certioraries.—Approved Dec. 27, 1821.

Whereas, much inconvenience has resulted in practice, and frequently great injustice has been done to parties litigant in the several Justices' Courts of this State, from the provisions of the said 5th section [of the above-described act;] for remedy whereof—

529. Be it enacted, That so much of the 5th section of an act passed on the 16th day of December, in the year 1811, as relates to certioraries, be and the same is hereby repealed.

An Act to amend an act to regulate the granting of Certioraries and Injunctions in this State, passed Dec. 16, 1811.—Approved Dec. 27, 1842.

530. Sec. I. Be it enacted, That from and after the passing of this act, the third section of the above-recited act, be so altered and amended as to authorize the judges of the superior courts of this State, to grant injunctions upon such security and under such terms as in their discretion such case may require.

531. Sec. II. It shall be lawful for a second injunction to be granted in certain cases, where a previous injunction may have been dismissed for cause not connected with the merits of the case. And when the judge to whom the application may be made, shall be satisfied that a second injunction should issue.

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

An Act to amend the several laws of this State in relation to Writs of Certiorari.—Approved Feb. 21, 1850.

532. Sec. I. Be it enacted, That from and after the passage of this act, in all cases in any of the justices' courts of this State, when either of the parties shall be dissatisfied with the judgment of said court, it shall be lawful as here- tofore for said party so dissatisfied, to apply for and obtain a certiorari on complying with the requisitions heretofore prescribed by law: Provided al- ways, that the petition for certiorari shall not be to the judge of the superior court, but to the superior court. And on being filed in the office of the clerk of the superior court, it shall be his duty to issue the writ, directed to the justices of the peace of the district where the decision complained of was made; directing them to certify and send up the proceedings in the case to the next superior court. And in case the next superior court shall sit within twenty days after the issuing of said writ, then the said writ shall be returnable to the next succeeding court, which said writ shall be served on one of the said justices (by the party applying for the certiorari,) by the sheriff, deputy or any constable, at least fifteen days previous to the court to which the return is to be made. And it shall be the duty of the clerk of the superior
court to place the case on the certiorari docket, which said docket the judge of the superior court shall take up and dispose of in its order, under such rules, regulations and restrictions as are now prescribed by law for disposing of certiorari cases.

533. Sec. II. That the writs of certiorari granted in each case, under the provisions of the above section, shall operate as a supersedeas of the judgment in the justices' court until the final hearing in the superior court.

534. Sec. III. In all cases when the error committed by said justices' court, is an error in law, which must finally govern the case; and in all other cases when the judge of the superior court shall be satisfied there is no question of fact involved which makes it necessary to send the case back for a new hearing in the justices' court, then it shall be the duty of said judge to make a final decision on said case without sending it back to the justices' court, with instructions as heretofore.

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

Petition for Certiorari.

STATE OF GEORGIA, } To the Superior Court of said County.
Houston County. } The Petition of Richard Roe, showeth that heretofore, to wit, at the January Term, 1859, of the Justices' Court, in and for the 619th District, G. M. (James Mack and Charles Smith, Justices of the Peace, presiding,) there came on to be tried, in said Court, then and there, a cause which had been by John Doe, previously commenced against your Petitioner, on an Open Account, for the sum of forty dollars. And your Petitioner avers, that at the said Term of said Court, a Judgment was rendered, on said Account against your Petitioner, for the full amount of said Account. And your Petitioner avers, [here set out fully and at large the cause of dissatisfaction, whether it relates to law or fact.] Therefore, to the end that justice may be done in the premises, your Petitioner prays the issuing of the State's Writ of Certiorari, directed to the presiding Justices of said Court, requiring them to certify and send up to the next Superior Court, to be held in and for said County, all the proceedings in the cause aforesaid. And may it please the Court to grant to Petitioner, such relief in the premises as may be agreeable to law and justice. And your Petitioner will ever pray, &c.

CLINTON S. DUNCAN, Pet'r's Atty.

I, Richard Roe, do solemnly swear, that the foregoing Petition for Certiorari, is not filed in this case, for the purposes of delay only. And I verily believe, I have a good cause for Certiorari.

Sworn to and subscribed, this March 1, 1859.

James Johnson, J. P.

Note.—The Affidavit is an essential part of the application, and therefore, it is unnecessary, in the Affidavit, to re-state the place where it is made.

Bond of the Applicant for Certiorari.

STATE OF GEORGIA, } We, Richard Roe as principal, and John Cofield
Houston County. } as security, both of the County and State aforesaid, acknowledge ourselves held and bound unto John Doe, and his
The condition of the above obligation is as follows—whereas, said John Doe, heretofore, instituted his action on an Open Account for forty dollars, in the Justices' Court of the 619th District, G. M. against said Richard Roe; on which action said Court of said District, rendered Judgment in favor of the Plaintiff, for the sum of forty dollars; with which Judgment of said Court, said Richard Roe is dissatisfied, and is about to move the issuing of the Writ of Certiorari. Now, should said Richard Roe, well and truly, pay the said John Doe, the eventual condemnation money and all future costs, then the above obligation to be void; otherwise, of force. This February 6, 1859.

Approved,—
Richard Roe, prin'. [L. S.]
James Johnson, J. P.
J. P. 

John Cofield, sec'y. [L. S.]

Certificate of the payment of Cost.

STATE OF GEORGIA, }
{ I, James Mack, one of the Justices of the Peace, in and for the 619th District, G. M. hereby certify, that Richard Roe, (Defendant in an action, in said Court, instituted by John Doe against said Richard Roe, on an Open Account, for the sum of forty dollars, and on which Account, a Judgment was rendered in favor of the Plaintiff,) has paid the Costs in said case, and given Bond and security, according to law, in cases of application for Certiorari. This February 6, 1859.

JAMES MACK, J. P.

Note.—The Act of Dec. 27, 1842, (see Justices' Court,) provides, (in cases of Certiorari,) that "if such party," (dissatisfied with the proceedings of the Court,) "will make an Affidavit, in writing, that he or she is advised and believes, that he or she has good cause for "certioraring" the same to the Superior Court, and that owing to his or her poverty, he or she is unable to pay the cost and give security, as required by law, such affidavit shall, in every respect, answer instead of the certificate of the presiding Justice, that the cost has been paid and security given, as now required by law."

Writ of Certiorari.

CLERK'S OFFICE, Superior Court, February 6, 1859.

STATE OF GEORGIA, }
{ To the Justices of the Peace in and for the 619th District, Georgia Militia.

Whereas, Richard Roe alleges by his Petition for Certiorari, that at the January Term of your Court, eighteen hundred and fifty-nine, Judgment was rendered against him, in favor of John Doe, on an Open Account, for the sum of forty dollars, with which Judgment, Petitioner is dissatisfied. And whereas, said Richard Roe has complied with the requirements of the law, in cases of application for Certiorari; now, therefore, you are hereby notified and required to certify and send up to the Superior Court, to be held in and for said County, on the fourth Monday in April next, under your hands and seals, all the facts and proceedings in the case, in your Court, aforesaid.

Witness, the honorable Henry G. Lamar, Judge of said Court.

WILLIAM H. MILLER, Clerk.
Return of the Justices of the Peace.

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

Houston County. } In Answer to the Writ of Certiorari, to us directed, dated February 6, 1859, the undersigned submit, that the following is a full, direct and complete Answer; containing all the facts and proceedings, in the case of John Doe against Richard Roe, action on an Open Account pending in said Court; upon which Account Judgment was rendered for the Plaintiff against the Defendant, for the sum of forty dollars.

[Here set out fully and distinctly all the facts and circumstances connected with the case, so as to meet the requirements of the Petition for Certiorari, fully.]

All of which is respectfully submitted.

Given under our hands and private seals, there being no seal of Office, this February 8, 1859.

JAMES MACK, J. P. [L. S.]
JOHN JONES, J. P. [L. S.]

Note.—The Answer of the Justices of the Peace must not be written out by either of the Parties or their Attorneys; nor written out by either of them and transcribed by another person; nor dictated by them, or either of them.

An Act to amend the several laws of this State upon the subject of Writs of Certiorari.—Approved Dec. 22, 1857.

535. Sec. I. Be it enacted, That from and after the first day of January next, no writ of certiorari shall be granted or issued to any Justices' Court in this State, unless the party applying for the same, his agent or attorney, shall make and file with his petition the following affidavit, to wit:—

Georgia, County.

I, A B, do solemnly swear, that the Petition for Certiorari, is not filed, in this case, for purposes of delay only; and I verily believe I have good cause for Certiorari.

Sworn to and subscribed, before me, this day of 18.

536. Sec. II. That it shall and may be lawful for the presiding judge before whom any writ of certiorari, hereafter granted, may be heard, on motion of the opposite party, to order, that not more than twenty per cent. damages, against the plaintiff in certiorari, in case it shall be made appear to him that the said certiorari was frivolous and applied for without good cause for the same, or for purposes of delay only; and judgment may be entered accordingly. Any law, usage, or custom, to the contrary notwithstanding.

Sec. III. That all laws and parts of laws against this act, be and the same are hereby repealed.

An Act to alter and amend an act entitled an act supplementary to an act entitled "an act regulating the granting of Certioraries and Injunctions in this State," passed 29th Dec. 1838, so far as relates to the time allowed for applying for writs of Certiorari.—Approved Dec. 11, 1858.

Whereas, much delay and inconvenience in the final disposition of causes in the Justices' Courts of this State, arise from the unreasonable time allowed for making application for Writs of Certiorari; for remedy where-
Three months allowed to apply for Certiorari.

537. Sec. I. Be it enacted, That the provisions of said recited act, passed Dec. 29th, 1838, which allows six months within which to apply for writs of Certiorari, be so altered and amended as to require parties desiring such writ, to apply for the same within three months after the final determination of the case in the justices' court.

Sec. 2. [Repeals conflicting laws.]

Note.—All Writs of Certiorari, shall after having been docketed by the Clerk, be delivered to the Magistrate whose proceedings are the subject of complaint. And written Notice shall be given to the opposite party in interest, at least ten days before the hearing of the case, unless the Certiorari shall be applied for and sanctioned within twenty days after the Decision complained of.—15th Com. Law Rule of Court.

Notice.

STATE OF GEORGIA,  John Doe—You are hereby notified that in the Houston County, a case lately decided in the Justices' Court of the 619th District, G. M. in your favor; in which case I was Defendant, I have applied for and have had issued, the Writ of Certiorari, returnable to the next Term of the Superior Court of said County, to be held on the fourth Monday in April next. This February 8, 1859.

RICHARD ROE, Pfiff in Cer.

MORTGAGE ON REAL ESTATE.

538. 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 [on or before the first day of the next term—see 540] thereafter; which rule shall be published in one of the public gazettes of this State, at least once in every month [once a month, for four months—see 539] until the time appointed for payment, or served on the mortgager, or his [her or their] special agent, at least six [three months—see 539] months previous to the time the money is directed to be paid. And unless 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 mortgagor or his attorney; but where there shall be any surplus, the same shall be paid over to the mortgagor or his agent. And in case of any dispute as to the amount due on any mortgage, if the mortgagor shall appear within the time prescribed by this act, and make affidavit that he hath made payments which have not been credited on said mortgage; or that he is entitled to sets-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.
Mortgage Deed of Real Property.

STATE OF GEORGIA, }  This Indenture made this first day of May, in
Houston County, }  the year of our Lord eighteen hundred and fifty-
six, between Charles Smith, of the County and State aforesaid, of the
one part, and Richard Roe, of the same place, of the other part,
Witnesseth, that the said Charles Smith hath this day made and
delivered to said Richard Roe, his certain Promissory Note, subscribed
with his hand, and bearing even date with these presents, whereby
the said Charles Smith hath promised to pay said Richard Roe, or
bearer, one thousand dollars, on or before the twenty-fifth day of Decem-
ber, next ensuing the date thereof, for value received. Now, for and
in consideration of the sum of ten dollars, by the said Richard Roe to
the said Charles Smith, in hand paid, at and before the sealing and
delivery of these presents, the receipt whereof is hereby acknowled-
ged, as well as for the better securing the payment of the aforesaid
Promissory Note, the said Charles Smith hath granted, bargained and
sold, and doth by these presents grant, bargain, and sell unto the
said Richard Roe, his heirs and assigns, all that tract or parcel of land,
situate, lying and being in the County aforesaid, known as lot number
forty-nine, in the tenth district of said County; agreeably to original
survey, containing two hundred two and a half acres, more or less;
with all the rights, members, and appurtenances to said lot of land in
any wise appertaining or belonging. To have and to hold the said
bargained premises to the said Richard Roe, his heirs and assigns, to
his and their own proper use, benefit and behoof, forever. And the
said Charles Smith, for himself, his heirs, Executors and Adminis-
trators, the said bargained premises, unto the said Richard Roe,
will warrant and forever defend, against the claim of himself and
heirs, and against the claim of all other person whatsoever. Pro-
vided nevertheless, That if the said Charles Smith, his heirs, Execu-
tors and Administrators, shall well and truly pay, or cause to be paid,
unto the said Richard Roe, his heirs and assigns, the afore-mentioned
sum of one thousand dollars, on the day and time mentioned and
appointed for the payment thereof, in the said Promissory Note men-
tioned, with lawful interest on the same, according to the tenor of
said Note, then, and from thenceforth, as well this present Indenture
and the right to the property thereby conveyed, as said Promissory
Note, shall cease, determine and be void, to all intents and purposes.

In witness whereof, the said Charles Smith hath hereunto set his
hand and affixed his seal, the day and year first above written.

Signed, sealed and delivered, )
[ ]
in presence of )
John Stone, )
James Mack, J. P.)

Charles Smith, [L. S.]

Note for the Securing the Payment of which the Mortgage
was Given.

On or before the twenty-fifth day of December next, I promise to pay
Richard Roe, or bearer, one thousand dollars. For value received.
This May 1, 1856.

Charles Smith.
Petition of Mortgagee.

STATE OF GEORGIA,
Houston County.

To the Superior Court of said County.

The Petition of Richard Roe showeth, that heretofore, to wit, on the first day of May, in the year of our Lord eighteen hundred and fifty-six, Charles Smith, of said County, made and delivered to your Petitioner, his certain instrument in writing, called a Promissory Note, whereby he promised, on or before the twenty-fifth day of December, next following the date of said Note, to pay your Petitioner, or bearer, one thousand dollars, for value received. And for the better securing the payment of said Note, on the day and year aforesaid, said Charles Smith executed and delivered to your Petitioner his certain Deed of Mortgage, conveying to your Petitioner lot of land number forty-nine, in the tenth district of said County, conditioned to be void upon the payment of the Promissory Note aforesaid; (which Note and Deed of Mortgage are here in Court to be shown.) Yet, your Petitioner avers, that said Charles Smith, although so indebted, and to pay said Note often requested, hath not paid said Note, or any part thereof, but the same to pay hath hitherto refused and yet refuses—wherefore, your Petitioner prays that such rule and order may be made and passed by the Court, as will be in conformity to the statute in such case made and provided, etc. April Term, 1858.

JAMES A. PRINGLE, Plff's Att'y.

Rule Nisi.

GEORGIA—HOUSTON COUNTY.—In the Superior Court.

Present, the honorable Henry G. Lamar, Judge of said Court.

RICHARD ROE } Mortgage, etc.—April Term, 1858.
CHARLES SMITH.

It appearing to the Court by the Petition of Richard Roe, (accompanied by the Note and Mortgage Deed,) that, on the first day of May, eighteen hundred and fifty-six, the defendant made and delivered to the Plaintiff, his Promissory Note, bearing date the day and year aforesaid, whereby the Defendant promised, on or before the twenty-fifth day of December, next following the date of said Note, to pay the Plaintiff, or bearer, one thousand dollars, for value received. And, that afterwards, on the day and year aforesaid, the Defendant, the better to secure the payment of said Note, executed and delivered to the Plaintiff his Deed of Mortgage, whereby the said Defendant Mortgaged to the Plaintiff lot of land number forty-nine, in the tenth district of said County, containing two hundred two and a half acres, more or less. And it further appearing that said Note remains unpaid, it is, therefore ordered, that the said Defendant do pay into Court, on or before the first day of the next term thereof; the principal, interest and costs due on said Note, or show cause to the contrary, if any he can. And that on the failure of the Defendant so to do, the equity of redemption in and to said Mortgaged premises, be forever thereafter barred and foreclosed. And it is further ordered, that this Rule be published in the Southern Recorder, once a month, for three months.
previous to the next term of this Court, or served on the Defendant, or his special Agent, or Attorney, at least three months previous to the next term of this Court.

A true extract from the Minutes of this Court.

WILLIAM H. MILLER, Clerk.

Rule Absolute.

GEORGIA, HOUSTON COUNTY.—In the Superior Court.

Present, the honorable Henry G. Lamar, Judge of said Court.

RICHARD ROE
vs.
CHARLES SMITH.

Mortgage, etc.—October Term, 1858.

Whereas, at the April Term of this Court, last past, a Rule Nisi. was granted in the above-stated case, requiring the Defendant to show cause why he should not pay into Court the principal, interest and costs, due on a certain Note given by the Defendant to the Plaintiff, on the first day of May, eighteen hundred and fifty-six, and to fall due on the twenty-fifth day of December next ensuing, for the sum of one thousand dollars. For the better securing the payment of which Note, said Defendant had executed on the same day and year aforesaid, to the Plaintiff, his Deed of Mortgage to the Plaintiff for lot of land number forty-nine, in the tenth district of said County, containing two hundred two and a half acres, more or less. And it appearing that a copy of said Rule Nisi. has been served on the Defendant personally, and that said Defendant still neglects and refuses to pay the amount due on said Note, or to show cause to the contrary: therefore, it is ordered, considered and adjudged, that the equity of redemption in and to said Mortgaged premises be and the same is hereby barred and forever foreclosed. And it is further ordered, that the Plaintiff do recover of and from the Defendant, the sum of one thousand dollars for his principal debt, the sum of seventy-five dollars for his interest up to this date (with all accruing interest), and the sum of fifteen dollars for his costs in this behalf laid out and expended, and that Execution issue against the Mortgaged premises for the sums aforesaid. And the Defendant in mercy, etc. Judgment signed 25th October, 1858.

JAMES A. PRINGLE, Plift's Att'y.

Mortgage Fi. Fa.

STATE OF GEORGIA, 
Houston County. 

To all and singular the Sheriffs of said State.

We command you, that of lot of land number forty-nine in the tenth district of said County, the property of Charles Smith, described and conveyed in a certain Indenture of Mortgage, bearing date on the first day of May, eighteen hundred and fifty-six, you cause to be made the sum of one thousand dollars principal, seventy-five dollars interest up to the twenty-fifth instant (with all accruing interest), and fifteen dollars costs, which Richard Roe lately in our Superior Court, at Perry, in the County aforesaid, recovered against said Charles Smith, as well for damages by reason of the non-performance of certain promises by the said Charles Smith before that time made, as for costs and charges in
his suit, in that behalf expended, whereof said Charles Smith is convicted and liable, as appears to us of record. And have the said sums of money before the said Court, at Perry aforesaid, on the fourth Monday in April next, to render to the said Richard Roe, his damages, costs and charges aforesaid. And have you then and there this Writ.

Witness, the honorable Henry G. Lamar, Judge of said Court, this October 30, 1858.

William H. Miller, Clerk.

Sheriff's Sale of Mortgaged Property.

On the first Tuesday in January next, will be sold at the court-house door, in the town of Perry, Houston County, between the lawful hours of sale and to the highest and best bidder, lot of land number forty-nine in the tenth district of said County, containing two hundred two and a half acres, more or less, the same being well improved. Levied on as the property of Charles Smith, by virtue of a Mortgage fi. fa. issued from the Superior Court of said County in favor of Richard Roe. This November 1, 1858.

Madison Marshall, Sheriff.

Affidavit of the Defendant.

STATE OF GEORGIA, } In person appeared before the undersigned,
Houston County. } Charles Smith, who after being sworn saith, that

on the first day of May, eighteen hundred and fifty-seven, he paid the sum of three hundred dollars, on a Note and Mortgage, given to Richard Roe, for one thousand dollars, dated the first day of May, eighteen hundred and fifty-six, and to become due the 26th day of December thereafter. (For the better securing the payment of which Note, deponent executed to the said Richard Roe, his Deed of Mortgase, of even date with said Note, conveying conditionally, to said Richard Roe, lot of Land number forty-nine, in the tenth district of said County.) Which payment has not been credited thereon.

Sworn to and subscribed,
before me, this June 1, 1857. }

James Mack, J. P. }

Charles Smith.

An Act to amend an act entitled “an act to amend the Judiciary of 1799, so far as relates to Mortgages on Real Estate.”—[The act of which this is amendatory is omitted as being superseded.]—Approved Dec. 21, 1829.

539. From and after the passage of this act, when any person or persons, his, her or their agent or attorney shall petition the superior court, as prescribed by the Judiciary of 1799, for the foreclosure of any Mortgage on real estate, the court shall grant a rule directing that the principal and cost shall be paid into court within six months thereafter; [see 540;] which rule shall be published in one of the public gazettes of this State, once a month for four months, or served on the mortgager or his, her or their special agent or attorney, at least three months previous to the time the money is directed to be paid: Provided, that nothing in this act shall be so construed as to affect any mortgage which may exist at the time of the passage of this act.
Sec. II. So much of the said Judiciary of 1799, (and of the said amendatory act,) as militates against this, is hereby repealed.

An Act to alter and amend the several acts regulating the foreclosures of Mortgages upon Real Estate.—Approved Dec. 26, 1836.

540. From and after the passage of this act, in all cases where any application shall be made to any superior court of this State for the foreclosure of any Mortgage upon real estate, it shall be the duty of such court to pass an order, requiring the mortgagor to pay the principal and interest due upon such mortgage, into court, on or before the first day of the next term, which order shall be served or published, in the manner now required by law. And if such order be not complied with by the mortgagor, the court may at such term, pass a rule absolute for the sale of the mortgaged property.

Mortgages of personal property.

541. Sec. XVIII. Mortgages of personal property shall be foreclosed in the following manner—Any person or persons holding a mortgage on personal property, [or his agent or attorney-in-fact, or at law—see 542,] 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 issue execution as on a judgment. Which execution being delivered to the sheriff, it shall be his duty to levy on the property wheresoever the same may 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 overplus, 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 mortgagee, 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.

Mortgage of Personal Property.

STATE OF GEORGIA, } Know all men by these presents, that I, John
Houston County. } Doe, of the County and State aforesaid, for and in
consideration of the sum of ten dollars cash in hand paid, at and before
the scaling and delivery of these presents, the receipt whereof is hereby acknowledged, as well as for the better securing the payment of a certain Promissory Note, which I have this day made and delivered to Richard Roe, of the same place, bearing even date with these presents, and to become due on the twenty-fifth day of December next, whereby I promise to pay said Richard Roe or bearer five hundred dollars, for value received, have bargained and sold to said Richard Roe, the following property, to wit: a certain Negro man named Jacob, of yellow complexion,
twenty years of age, five feet ten inches high, sound and well. To have and to hold the said bargained property, to him the said Richard Roe, his heirs and assigns for ever, (the said John Doe retaining possession of said Negro man.) And I, the said John Doe, for myself, my heirs, Executors and Administrators, the said bargained property unto the said Richard Roe, his heirs and assigns, against myself, my heirs, Executors and Administrators, and against all and every other person and persons whomsoever, shall and will warrant and defend by these presents. Provided nevertheless, that if the said John Doe, his heirs, Executors or Administrators, shall and do, well and truly pay, or cause to be paid, unto the said Richard Roe, his heirs or assigns, the afore-mentioned sum of five hundred dollars, on the day mentioned and appointed for the payment thereof in said Note, with lawful interest on the same, according to the tenor and effect of said Note, then and from thenceforth, as well this Bill of Sale, and the right to the property therein conveyed, as the said Promissory Note, shall cease, determine and be void, to all intents and purposes.

In testimony whereof, the said John Doe hath hereunto set his hand and affixed his seal, this May 1, 1857.

Signed, sealed and delivered, in presence of

John Stone,
James Mack, J. P.

JOHN DOE. [L. S.]

Affidavit of Foreclosure annexed to Mortgage.

STATE OF GEORGIA, Houston County.

In person appeared before the undersigned, Richard Roe, the Mortgagor, who being duly sworn saith, that John Doe, the Mortgagor, is justly indebted to him, degonent, on this Mortgage, the sum of five hundred dollars for his principal debt; the sum of thirty dollars for his interest, and that said sums are now due and unpaid.

Sworn to and subscribed, before me, this January 1, 1858.

John D. Winn, J. I. C.

RICHARD ROE.

Fiat of the Justice of the Inferior Court.

At Chambers, January 1, 1858.

STATE OF GEORGIA, Houston County.

To the Clerk of the Inferior Court of said County.

Let an execution of fieri facias be issued, to be levied of the property described in the within (or above) Mortgage, five hundred dollars principal debt, thirty dollars interest, (and all accruing interest,) and five dollars costs. Herein fail not.

Witness my hand and official Signature.

JOHN D. WINN, J. I. C.

Mortgage. Fi. Fa.

STATE OF GEORGIA, Houston County.

To all and singular the Sheriffs of said State.

We command you, that of a certain Negro man named Jacob, of yellow complexion, twenty years of age, five feet ten inches high, the property
of John Doe of said County, you cause to be made the sum of five hundred dollars principal, thirty dollars interest up to this date (and all accruing interest,) and five dollars costs. Which sums Richard Roe lately recovered against said John Doe, before the honorable John D. Winn, one of the Justices of the Inferior Court of said County, on the foreclosure of a Mortgage given by said John Doe to said Richard Roe, on said Negro man Jacob, by reason of the non-performance of certain promises by the said John Doe heretofore made, whereof the said John Doe is convicted and liable as appears to us from said Mortgage, the same bearing date the first day of May, eighteen hundred and fifty-seven. And have the said sums of money before the Inferior Court to be held at Perry, in and for said County, on the fourth Monday in July next, to render to said Richard Roe his damages, costs and charges aforesaid. And have you then and there this Writ.

Witness, the honorable John D. Winn, one of the Justices of said Court, this January 2, 1858.

JOHN H. KING, Clerk.

Defendant’s Affidavit.

STATE OF GEORGIA,  

Houston County.  

John Doe, who being sworn, deposes and saith, that a Mortgage fieri facias lately issued by the Clerk of the Inferior Court of said County, against a certain Negro man named Jacob, the property of deponent, (which ft. fa. has been levied on said Negro man,) in favor of Richard Roe, for the sum of five hundred dollars, besides interest and cost, is proceeding illegally against deponent, for that deponent testifying says, that there is but the sum of three hundred dollars due on said Mortgage, deponent having paid two hundred dollars on said Mortgage.

Sworn to and subscribed, before me, this January 2, 1858. 

James Mack, J. P.

John Doe.

Order by the Justice of the Inferior Court.

STATE OF GEORGIA,  

Houston County.  

To all and singular the sheriffs of said State.

Whereas, on the first day of January, eighteen hundred and fifty-eight, Richard Roe appeared before the undersigned and made oath, that a Mortgage then had and held by him deponent, against John Doe (upon a certain Negro man named Jacob,) for the sum of five hundred dollars, besides interest and cost, was then due and unpaid. And whereas, an order was thereupon issued, directed to the Clerk of the Inferior Court, authorizing and commanding him to issue a writ of fieri facias against the Mortgaged property, for the sum sworn to be due; (which ft. fa. has been levied on the Mortgaged property.) And whereas, said John Doe, hath appeared before James Mack, a Justice of the Peace, and made oath that there is but the sum of three hundred dollars due on said Mortgage (and has given the bond required by law:) you are therefore, hereby commanded and required to postpone the sale of said Negro man Jacob, until further order in that behalf made, and return
said & fa. to the next Inferior Court to be held in and for said County, on the fourth Monday in July next.

Witness my hand and official signature, at Chambers, this January 2, 1858.

John D. Winn, J. I. C.

**Bond given by the Defendant.**

STATE OF GEORGIA, \{ We, John Doe as principal, and Charles Smith as security, acknowledge ourselves held and bound to Madison Marshall, Sheriff of said County, the sum of one thousand dollars, subject to the following condition—

The condition of the above obligation is this: Whereas, said Sheriff, has levied a Mortgage & fa. in favor of Richard Roe against John Doe, issued by John H. King, Clerk of the Inferior Court, upon a certain Negro man named Jacob, the property mentioned in said Mortgage. And whereas, said John Doe, has filed his affidavit, denying that the amount for which said & fa. issued, is due. And whereas, an order has been issued by the honorable John D. Winn, one of the Justices of the Inferior Court of said County, postponing the sale of said Mortgaged property: now, should said John Doe well and truly return said Negro man Jacob when called for by said Sheriff, then the above obligation to be void; otherwise of force

This January 2, 1858.

Approved—

John Doe, principal. [L. S.]

Charles Smith, security. [L. S.]

**Relinquishment where the debt is paid without Suit.**

STATE OF GEORGIA, \} I, the within named Richard Roe, (or I, Richard

Houston County. \} Roe, Mortgagor, described in a certain Mortgage executed by John Doe, bearing date the first day of May, eighteen hundred and fifty-seven, do hereby acknowledge full satisfaction of the debt, to secure the payment of which said Mortgage was executed. In consideration of which, I hereby relinquish all right and title to the property in said Mortgage conveyed.

In testimony whereof I have hereunto set my hand and affixed my seal, this January 2, 1858.

Signed, sealed and delivered, in presence of

Richard Roe, Mortgagor. [L. S.]

An Act to amend the eighteenth section of the act passed on the sixteenth of February, 1799, entitled “an act to revise and amend the Judiciary System of this State.”—Approved Dec. 21, 1839.

542. Sec. 1. Be it enacted, That from and after the passage of this act, mortgages upon personal property may be foreclosed upon the affidavit of the agent, or attorney-in-fact, or at law, of the person or persons holding such mortgage, as to the amount due.

543. Sec. II. All such mortgages shall be foreclosed and execution issue, in the county where the mortgagors reside at the time of the execution of the same, if residents of this State.

Note.—There are several very important provisions, bearing an intimate connection
with this subject, particularly "An act to compel the purchasers of Mortgaged Property; purchasers of Life-Estates, or Estates-for-term-of-years in Personal Property, at Sheriffs', Coroners' or Constables' sales to give Bond," for which the reader is referred to the title Sheriff and Deputy.

HABEAS CORPUS.

544. Sec. VII. The judges of the superior courts, or any one of them, and By whom the Writ of Habeas Corpus may be granted.

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 an alias and plurics habeas corpus and sometimes more; and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land; whereby many of the King's subjects have been, and hereafter may be, long detained in prison; in such cases where by law they are bailable, to their great charges and vexation.—[And see 565.]

An Act for the better securing the liberty of the Subject, and for prevention of Imprisonment beyond the seas.—Approved A. D. 1678.

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: Be it enacted That whenever any person or persons shall bring habeas corpus, directed unto any sheriff or sheriffs, jailer, minister, or other person whatsoever, for any person in his or their 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, under-keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officer, under-keepers or deputies, shall 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 remanded 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

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Officer must certify cause of Imprisonment, etc.

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.

Writs how to be marked.

546. 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, That all such writs shall be marked in this manner, Per statutem tricesimo, primo, Coroli secundi regis, and shall be signed by the person that awards the same.

Writs in vacation.

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 of commitment and detainer, or otherwise, upon oath made, that such copy 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 on 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 he shall then be one of 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 coif, of any of the said courts; and upon service thereof 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 detainer; 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; or in such other court 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 hand and seal of any of the said justices or barons, or some justice or justices of the
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peace, for such matters or offences for the which, by the law, the prisoner is not bailable.

547. 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.

548. V. And be it further enacted, That 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-jailers and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, shall for the first offence, forfeit to the prisoner or party grieved, 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 grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the king's courts at Westminster; wherein no essoin, protection, privilege, injunction, wages of law or stay of prosecution by non vult uterius prosequi, or otherwise, shall be admitted or allowed, or any more than one imparlance. And any recovery or judgment, at the suit of any party grieved, shall be a sufficient conviction, for the first offence; and may [any] after recovery or judgment, at the suit of a party grieved, 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.

549. VI. And for the prevention of unjust vexation by reiterated commitments for the same offence: Be it enacted, 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, re-commit or imprison, or knowingly procure or cause to be re-committed 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.

550. VII. Provided always, and be it further enacted, That if any person or persons shall 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 oyer and terminer and general jail-delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or general jail-delivery, after such commitment, it shall and may be lawful to and for the judges of the court of king's bench and justices of oyer and terminer 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 [the prisoner] upon bail, unless it

Writ when not to be granted in vacation.

Liability of Officer neglecting or refusing to do his duty under this act.

Person discharged under Habeas Corpus, not to be re-committed for same offence.

Person committed for Treason or Felony, shall be indicted the next term, or let to bail.
JUDICIARY.—HABEAS CORPUS.

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 first day of the sessions of oyer and termine and general jail-delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and termine or general jail-delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

551. 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.

552. IX. Provided always, and be it enacted, 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 sent by order of any judge of assize, or justice of the peace, to any common work-house 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 countersign any warrant or warrants, for such removal aforesaid, contrary to this act, as well he that makes or signs or countersigns 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 grieved.

553. X. Provided also, and be it further enacted, 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 coif, 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 grieved, the sum of five hundred pounds, to be recovered in manner aforesaid.

554. XI. And be it declared and enacted, That an habeas corpus, according to the true intent and meaning of this act, 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.

555. XII. And for preventing illegal imprisonments in prisons beyond the seas: Be it further enacted, 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 countersign, any warrant or writing for such commitment, detainee, 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 have 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 imparlance, shall be allowed, excepting such rule of the court wherein the action shall depend, made in open court, as shall be thought 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 be 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 thereunto belonging; and shall incur and sustain, the pains, penalties and forfeitures limited, ordained and provided, in and by the statute of provision and præmunire, 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.

556. 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 renounce such contract.

557. XIV. Provided always, and be it enacted, That if any person or Convicts may be transported.

558. XV. Provided also, and be it enacted, That nothing herein contained, shall be deemed, construed or taken, to extend to the imprisonment of any person, before the first day of June, one thousand six hundred seventy and nine; or to any thing advised, procured or otherwise done, relating to such imprisonment. Any thing herein contained, to the contrary notwithstanding.

559. 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 islands, or foreign plantations of the king, his heirs or successors, where he or she ought to be tried for such offence, such person or Persons to be sent for trial to the place where the offence was committed.
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.

560. 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 then be 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.

561. XVIII. And to the intent no person may avoid his trial at the assizes or general jail-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 thereupon to do what to justice shall appertain.

562. 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.

563. XX. And be it also enacted, That if any information, suit or action 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 that shall try the same; which matter being pleaded had been 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.

564. 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 to the circumstances making out that suspicion, are more or less weighty, which are best known to the justices of the peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county: Be it therefore enacted, That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory-before-the-fact, to any petty treason or felony, or upon suspicion thereof; or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

An Act to amend the seventh section of an act, entitled "an act to amend an act entitled an act to revise and amend the Judiciary System of this State, passed the 16th day of February, 1799." And to provide for opening and adjourning the several Courts of Ordinary in this State, in certain cases.—Approved Dec. 20, 1823.

565. From and after the passage of this act, it shall not be lawful for any one or more of the justices of the inferior courts of this State, to discharge or admit to bail, any person under a writ of habeas corpus, unless a majority of the justices of said court shall concur in opinion.
An Act to authorize and empower the Justices of the Inferior Courts of this State, to discharge Criminals or Offenders against the law, from Jail, in certain cases. And also, to discharge defendants in certain civil cases.—Approved Dec. 29, 1847.

Whereas, it sometimes happens that Criminals and Offenders against the law, are sentenced to imprisonment in the common Jail, for a definite period and until all Costs are paid by said Criminal or Offender. And whereas, it may happen that the Criminal or Offender so sentenced is unable to pay the Costs, the consequence of which is a perpetual imprisonment of the Criminal or Offender, at the expense of the County in which he may be imprisoned; for remedy whereof—

566. Sec. I. Be it enacted, That from and after the passage of this act, when any criminal or offender against the laws of this State, shall be so confined in any of the jails thereof, under a sentence of imprisonment for a definite period and until all costs are paid, and the said criminal or offender, after the time of his imprisonment shall have expired, shall be unable to pay the costs, it shall and may be lawful for the justices of the inferior court of the county, in their discretion, (the whole court therein concurring) where such criminal or offender against the law, may be confined, to discharge him from such confinement. [See next Act.]

567. Sec. II. If any person or persons be imprisoned in the common jail of any county in this State, on a mesne or final process for debt; if the plaintiff in suit or execution, his agent or attorney, does not pay up, at the end of each and every week, the jail fees which have accrued, then and in that case, the inferior court may, and they are hereby authorized, to discharge the defendant or defendants, by writ of habeas corpus.—[See Insolvent Debtor.]

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

An Act defining how many Justices of the Inferior Courts of this State, shall concur in opinion, to make the Judgment of said Court.—Approved Dec. 22, 1857.

568. Sec. I. That from and after the passage of this act, in all cases brought before the justices of the inferior courts of this State, a majority of the justices presiding upon the trial of the same, shall pronounce the judgment; which judgment shall be binding, and as effectual as if a majority of the whole court were present and agreeing thereto.

Sec. II. [Repeals conflicting laws.]

An Act to require persons applying for a Writ of Habeas Corpus ad subjiciendum, in any State-case, to give the Prosecutor notice of the time and place, when said application will be heard.—Approved Jan. 22, 1852.

569. Sec. I. Be it enacted, That from and after the passage of this act, that no court shall sit upon and determine any application for a writ of habeas corpus ad subjiciendum, in any case, unless the applicant for said writ, or his attorney-at-law, shall have previously given timely notice to the prosecutor, or his attorney, of the time and place of the meeting of the court, to determine upon said application: Provided, said prosecutor, or his attorney, resides in the county where the person is confined.

Sec. II. That all laws militating against this act, be and the same are hereby repealed.
Petition for the Writ under the Statute.

STATE OF GEORGIA, } To the honorable John H. Ragin, one of the
Houston County. } Justices of the Inferior Court of said County.

The complaint and petition of John Doe, showeth, that he now is, and for many days last past, has been confined and holden in imprisonment, without law or right, in the common Jail of said County, by Richard Roe, Jailer, of said County, (as will more fully appear from an examination of the accompanying copies of the Warrant of Arrest, and the Warrant of Commitment,) charged with the supposed crime of Assault and Battery. Wherefore, Petitioner prays your honor to issue the State's Writ of Habeas Corpus ad Subjiciendum, that Petitioner, together with the cause of his caption and detainer, may be brought before your honor, to the end that what appertains to justice may be done. And your Petitioner will ever pray, &c. This May 1, 1859.

JAMES A. PRINGLE, Pet'r's Atty.

Affidavit if the Officer refuses Copies of the Warrant, etc.

STATE OF GEORGIA, } In person appeared before the undersigned, a
Houston County. } Justice of the Peace, in and for said County, John
Jones and John Smith, who, being duly sworn, say that they were present, on yesterday, the thirtieth day of April, of the present year, when John Doe, now confined in the common Jail of said County, applied to Richard Roe, Jailer of said County, for copies of the Warrant of Arrest, and the Warrant of Commitment, and other papers, against him, the said John Doe, when said Richard Roe, refused, wholly and entirely, to furnish said John Doe with said copies, so demanded.

Sworn to and subscribed, before me, this May 1, 1859.

James Mack, J. P.

John Jones.
John Smith.

Note.—If, upon application to the Jailer, copies of the proceedings be furnished, the above Affidavit is unnecessary and should be omitted.

Notice to the other Justices.

STATE OF GEORGIA, } To the honorable Charles Anderson, John D.
Houston County. } Winn, William F. Postell and Henry M. Holtzclaw, Justices of the Inferior Court of said County.

Whereas, John Doe is now confined in the common Jail of said County, and has, this day, made application to me for the Writ of Habeas Corpus ad Subjiciendum. And whereas, I have issued said Writ, returnable at ten o'clock on to-morrow morning, at Perry, in said County. You are, therefore, hereby requested to attend and associate upon the return of said Writ, at the time and place mentioned.

Witness my hand and official signature, this May 1, 1859.

John H. Ragin, J. I. C.

The Writ of Habeas Corpus.

STATE OF GEORGIA, } To Richard Roe, Jailer of said County—Greeting.
Houston County. }

Whereas, John Doe, now confined in the Jail of said County, has