

An act relative to clerks of counties and of county courts.

P. L. 1863, p. 440.

Approved March 21, 1863.

Acts of deputy clerks legalized.

17. SEC. 1. Where any of said clerks shall have heretofore appointed a deputy, and such deputy shall have authenticated acts or signed certificates in his own name as deputy clerk, instead of the name of his principal, all such authentications heretofore made and all certificates heretofore so signed by any acting deputy clerk, shall be taken and deemed as valid and effectual in law as if the same had been done in the name of the clerk and under his own hand.

An act concerning county clerks.

P. L. 1863, p. 485.

Approved March 25, 1863.

Clerks of Bergen, Cumberland and Atlantic counties authorized to take acknowledgments, &c.

18. SEC. 1. On and after the passage of this act, the clerk of the court of common pleas in the counties of Bergen, Cumberland, and Atlantic, shall be, and the said clerk is hereby authorized, during his continuance in office, to perform all the duties and exercise all the powers belonging to the office of a commissioner for taking the acknowledgment and proof of deeds; and each clerk aforesaid, upon taking any acknowledgment or affidavit, by virtue of the powers conferred by this act, shall affix to his signature the words "county clerk."

An act for the purchase and preservation of the public newspapers printed in the several counties of this state.

P. L. 1848, p. 221.

Approved March 9, 1848.

Clerks, when authorized to subscribe for newspapers to be filed.

19. SEC. 1. The clerks of the several counties of this state be, and they are hereby authorized and required to subscribe for such newspapers, at least one, and not exceeding two, printed and published in each of the counties in which they officiate, as the boards of chosen freeholders in said counties may determine, and file the same in their respective offices, causing them to be bound from time to time in a substantial manner, in volumes of convenient size for the use of the inhabitants of the county, who shall have access to them, free from all charge or expense, during office hours.

Papers and binding thereof to be paid for by board of chosen freeholders.

20. SEC. 2. Such papers, and the binding thereof, shall be paid for by the respective boards of chosen freeholders out of the county treasury, upon the order of the clerk of the county; and the said boards of chosen freeholders are hereby authorized and required to pay all orders drawn as aforesaid by the said clerks for the papers, and binding thereof, aforesaid.

Constables.

1. Bond to be given. Form of. Condition
2. Clerk to give certified copy of to applicant.
3. Where bond prosecuted. Damages assessed.
4. When by jury.
5. Proceedings in suit on bond.
6. Prosecutor to give bond, if required.
7. Relief of surety when constable absconds, etc.
8. Court authorizing suits brought—how to be proceeded in.
9. On death of constables, how business settled.
10. Moneys received, how applied.

An act respecting constables.

Rev. 644, 656.

Approved April 16, 1846.

P. L. 1840, p. 38.

" 1844, p. 252.

R. S. 850.

Bond to be given.

1. That every person who shall be elected or appointed to the office of constable, in any of the townships of this state, shall, before he enters upon the execution of his office, repair to the township committee, and thereupon enter into a bond to the inhabitants of the township, in their corporate name and capacity, with one or more sureties, to be approved of by the said committee(a) in such sum as the said committee shall direct, conditioned for the true and faithful performance of all the duties of his said office as constable, in the following or like form:

(a) A *mandamus* will not lie commanding the township committee to accept a bond otherwise valid, when there is a doubt as to the legal election of the constable, *Prickett's Case, Spen. 134.*

Know all men by these presents, that we, A. B., C. D. and E. F., all of Form. the township of _____, in the county of _____, in the state of New Jersey, are held and firmly bound unto the inhabitants of the township of _____, in the county of _____, in the sum of _____ dollars, money of the United States, to be paid to the said inhabitants of the township of _____, in the county of _____, their successors or assigns, to which payment well and truly to be made, we bind ourselves, and each of us for himself in the whole, our and every of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the _____ day of _____ in the year of our Lord, &c.

The condition of this obligation is, that whereas the above bound A. B. Condition. was, at the last annual town meeting of the township of _____, elected a constable of said township; now, therefore, if the said A. B. shall truly and faithfully perform all the duties enjoined on him as constable of said township, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered in the presence of

A. B. [L. s.]
C. D. [L. s.]
E. F. [L. s.]

Which bond shall be delivered to the clerk of the township, who is hereby directed and required to record and file the same in his office. (a) Recorded and filed.

2. That if any person shall sustain loss by the neglect or default of any constable in the discharge of his official duties, whereby such bond shall become forfeited, and shall, by himself, his agent or attorney, make affidavit of such loss before any person authorized to administer the same, and shall tender such affidavit to the clerk of the township, city or borough having the custody of such bond, it shall be the duty of such clerk to file the said affidavit in his office, and thereupon forthwith to deliver to the person or persons making such affidavit, his, her or their agent or attorney, a certified copy of such bond, to the end that an action may be brought upon such bond. Clerk to give certified copy to applicant.

3. That all suits or actions to be brought and prosecuted on constables' bonds, conditioned for the faithful performance of the duties of the office of constable, shall and may be brought and prosecuted in the supreme court or any of the circuit courts or courts of common pleas of this state, and the same shall be conducted and prosecuted in every respect, as suits on sheriffs' bonds are by law directed to be prosecuted; and the court before whom any judgment shall be obtained on any constable's bond as aforesaid, shall from time to time, upon due notice, assess the damages which shall have been sustained by any person or persons by reason of any neglect or default of the said constable in his official duties, and the said court shall and may award execution thereon, with costs; provided, the said assessment do not exceed the penalty of the said bond. (b) Where bond prosecuted. Damages assessed. Proviso.

4. That assessments of damages in and by this act directed to be made by the court shall be made by a jury, upon application of either party interested, anything in this act to the contrary notwithstanding. When by jury.

5. That the name of the person or persons for whose use the said bond shall be prosecuted, shall be endorsed upon the first process to be issued thereon, and shall also be mentioned and stated in the declaration in such suit; and if, in any such suit, the plaintiffs shall discontinue, be nonsuited or judgment pass against them, the said person or persons for whose use the said suit is brought and prosecuted, and not the said township, city or borough, shall be liable for costs; and it shall be the duty of the sheriff or other officer to whom any writ of execution issued upon such judgment shall be directed and delivered, to make and levy the amount of money required to be made Proceedings in suit on bond.

(a) The condition of the bond should correspond with the language of the act, *Nottingham v. Giles*, Pen. *120. *Middleton v. McCormick*, Pen. *500. Yet if more comprehensive it will not be vitiated. *Woodwich v. Forrest*, Pen. *115. The sureties are liable if the constable collect money on a tax warrant and neglects to pay it over. *Hugg v. Camden*, Spen. 583. The action against the sureties must be on their bond and not against them as individuals. *Mattack v. Stow*, Pen. *532. Proceedings on the bond. see *Boyd v. Rose*, 1 South. *230. *Lewis v. Little*, 2 South. *685. Suit by the sureties to recover the amount they may have been obliged to pay, will not lie, *Stout v. Dills*, 1 South. *218.

(b) The action must be brought within nine years. *Knowlton v. Read*, 6 Hal. 320. If a constable be sued before a justice for neglect of duty, and have judgment in his favor, it is a good plea in bar to an action brought on his bond for the same neglect. *Lower Alloways Creek v. Moore*, 3 Gr. 146. No writ of inquiry to assess the damages is necessary; it will be done by the court unless such writ be applied for by the parties. *Jersey City v. Chase*, 1 Vr. 233. See *State v. Edsall*, 5 Hal. 190. How the property is bound after the first execution is satisfied, *Northampton v. Woodward*, 2 South. *788.

and levied by the said writ of execution, upon and out of the property, real or personal, as may be required of the said person or persons for whose use the said suit is brought or prosecuted.^(a)

Prosecutor to give bond, if required.

6. That the person or persons for whose use the said action shall be brought upon any such bond, shall, if required before issue joined, give bond to the defendants in the sum of one hundred dollars, with sufficient sureties, being freeholders and residents in this state, with condition to prosecute the said action with effect, and pay costs if the plaintiffs discontinue, be nonsuited or judgment pass against the plaintiffs; which bond shall be filed in the office of the clerk of the court in which such action shall be pending.

Relief of surety when constable absconds, etc.

7. That if any constable hath absconded or shall abscond, or become insolvent, or incapable of doing the duties of his said office, it shall be lawful for the court of common pleas of the county from which said constable hath absconded or shall abscond, or become insolvent, or incapable as aforesaid, on application for that purpose, to authorize the surety or sureties of such constable for the time being to ask, demand, sue for and recover any moneys which said constable could or might lawfully demand, levy and receive by virtue of any process of execution or other process in his official capacity as constable, and also all moneys in the hands of any person or persons collected by said constable on any execution or process, and which at the time of his absconding or insolvency or incapacity as aforesaid, were not paid over to the plaintiff or person entitled to the same.

Court authorizing suits brought.

8. That where, by the absconding, insolvency or incapacity as aforesaid, of such constable, executions or process in his hands remain wholly or in part unexecuted, it shall be lawful for the said surety or sureties for the time being, authorized as aforesaid by the court of common pleas, to apply to any justice of the peace in the county where such judgment was rendered, and execution issued thereon, for a summons in debt on such judgment and execution, in the name of the plaintiff or plaintiffs in the original process against the defendant or defendants therein; and the said suit shall proceed as in other cases of summons in debt, the said surety or sureties always producing before the said justice a transcript of the judgment and the execution or executions issued thereon, and the defendant or defendants may plead payment or satisfaction of such judgment or execution, in part or whole, to such absconding, insolvent or incapable constable, or other lawful discharge; and in case of final judgment against the defendant or defendants, execution may be issued immediately for debt and costs, but if the judgment should be for the defendant or defendants, with costs, the said surety or sureties shall pay the same, and if recovered against the plaintiff or plaintiffs named in the record, they may recover the same over from the surety or sureties.

How to be proceeded in.

On death of constables, business how settled.

9. That in case any constable shall die before settling up all executions that shall have come to his hands by virtue of his office, his executors or administrators shall and may have full power to collect and settle up any execution or process remaining unsettled at the time of his decease, in the same manner as the surety or sureties of constables in the preceding sections; and in case of the neglect or refusal of the said executors or administrators as aforesaid, the surety or sureties of the said deceased constable shall have the same power to collect and settle the said executions as mentioned in the preceding sections of this act.

Moneys received, how applied.

10. That all moneys which may be recovered or come to the hands of any surety or sureties, executor or executors, by virtue of this act or otherwise, in regard to the said absconding, insolvent, deceased or incapable constable, shall be held and appropriated by such surety or sureties, executor or administrator, to the only proper use and benefit of the person or persons who may have lawful right thereto.

^(a) If the name of the prosecutor has not been endorsed, leave will be given at any time to amend by endorsing the name on the writ and inserting it in the declaration, *Wiley*

v. Paterson, 3 *Harr.* 440. See also JUSTICES' COURTS, § 68, and cases cited.