

16. The recognizance mentioned in the thirteenth and fourteenth sections of this act may be acknowledged, and the sureties therein may be approved and allowed, either by the court in which judgment is given, in open court, or by any justice or judge thereof; or in case the said judgment be rendered in the supreme court or circuit court, before any one of the commissioners appointed by the supreme court to take recognizances of bail, and the recognizances so taken shall be filed in the court in which judgment is given.

How recognizance taken. *Ib.* § 9.

17. The recognizance mentioned in the fifteenth section of this act may be acknowledged before any one of the justices or judges of the court to which the writ of error is directed, at his chambers, in such reasonable sum as such justice or judge shall think fit; and such recognizance when so acknowledged, as aforesaid, and filed in the said court, shall be as good and effectual in law as if the same had been acknowledged in open court.

Before whom recognizance mentioned in section 15 may be taken. *Ib.* § 10.

18. When a writ of error shall be issued pursuant to the laws of this state, directed to the supreme court, or to any circuit court or court of common pleas, and presented to the court or to the presiding judge thereof, such writ of error shall stay execution; *provided*, the plaintiff in error shall within fifteen days after judgment rendered, unless further time be granted by the court or presiding judge, file in the office of the clerk of said court such recognizance of bail duly taken, as by law is or shall be required.^(a)

Recognizance to be filed within fifteen days after term in which judgment is entered. *Ib.* § 11. Amended.

19. It shall be lawful for the court of errors and appeals, or for the supreme court, or for any justice of the supreme court, upon good cause shown, and upon reasonable notice to require in any case in addition to the bail in error above mentioned, such further security by recognizance, to be given by the plaintiff in error as may seem proper; and unless such additional recognizance, to be taken in the manner hereinbefore prescribed, shall be given within the time appointed by the said court or justice, then the writ of error in such case shall forthwith cease to be a *supersedeas*.

Additional bail in error may be required.

Revision.

20. When it is apparent to the court that the writ of error is brought against good faith or for the mere purpose of delay, or it is returnable of a term previous to the entry of final judgment or special bail, when requisite, is not put in and perfected in due time, it shall not be a *supersedeas* or stay of execution; *provided always*, the thirteenth, fourteenth, and fifteenth sections of this act shall not extend to any writ of error to be brought by any executor or administrator, nor to any action popular, or action on any penal statute, nor to any indictment, presentment, inquisition or information.

Writ issued in bad faith will not stay.

R. S. 980 § 12, 13.

Bail not required in certain cases.

^(a) If the party holding the *postea* does not file the same at the time required by Rule 45 of the supreme court, the defendant, although he may bring error, cannot file his recognizance so as to stay execution, *Warwick v. Cor*, 7 *Vr.* 392.

Escheats.

1. Attorney general to issue writ and form of it.
2. To cause notice thereof to be advertised.
3. To serve notice on tenants, &c. To make conveyances.
4. Compensation to be made by state for services.
5. Injunction to restrain waste.

An act concerning escheats.

Har. 176.

Passed February 27, 1828.

R. S. 342.

1. That whenever the attorney general shall be informed, or shall have reason to suppose, that any person hath died seized of any real estate within this state, without making any devise thereof, and leaving no heirs capable of inheriting the same,^(a) he shall cause a writ to be issued out of the court of chancery, and directed to the sheriff of any county in this state, in the form following: "The State of New Jersey, to the sheriff of the county of _____ greeting: Because we are informed that _____

Attorney general to cause a writ to issue.

^(a) The real estate of a person dying intestate, and leaving no heirs capable of inheriting the same, escheats to and vests in the state at the instant of his death, *O'Hanlin v. Den*, *Van Kleeck*, *Spen.* 31: 1 *Zab.* 582. Land which has escheated may be granted by the state by a private act passed before any proceedings in escheat, *Colgan v. McKeon*, 4 *Zab.* 566. After the state in proceedings in escheat has acknowledged a certain person as heir at law, he cannot proceed with the escheat in the name of the state for his own benefit, *State v. Engle*, 1 *Zab.* 348.

died seized of divers lands, tenements and hereditaments in our county of _____, without making any devise thereof, and leaving no heir capable of inheriting the same; we command you, that, by the oath of twelve good and lawful men in your county, you diligently inquire, what lands, tenements and hereditaments the said _____ was seized of at the time of his death, if any; and what estate of inheritance, and when he died, and whether he made any, and what, devise thereof, and whether he left any heir, and, if he did, who is his heir, and what is the clear yearly value of such lands, tenements and hereditaments; and the inquisition which you shall take thereof, do you send, under your seal and the seals of those by whose oaths you take the same inquisition, before us, in our court of chancery, without delay, together with this writ."

Inquisition to be made.

To cause notice thereof to be advertised.

[Repealed March 15, 1859, P. L. 1859, p. 380].

Further proceedings.

Writ to issue.

Record and proceedings to be exemplified, and filed in the office of secretary of state.

Treasurer authorized and directed to advertise and make sale of the lands.

2. That it shall be the duty of the attorney general, in every case where an inquisition shall be taken pursuant to this act, to cause notice to be given thereof, in one of the newspapers printed at Trenton, in this state, [in one of the newspapers printed at the city of Washington and in one of the newspapers printed in the city of New York], for the space of six months successively, requiring the persons claiming any interest in the lands described in such inquisition, to appear and traverse the said inquisition, within twenty days after the expiration of the time limited in the said notice; and further, that no judgment shall be given upon the said inquisition, until after the expiration of said twenty days.

3. That in all cases in which any such inquisition shall be taken, if the real estate to be affected thereby, shall be possessed by any person residing on, or improving the same, it shall be the duty of the attorney general to cause notice of such inquisition to be served on each of the tenants occupying such real estate, at least forty days before any judgment shall be entered on such inquisition, which notice shall set forth the taking of such inquisition, and that judgment will be rendered thereon at the time limited in such notice, unless such tenants shall appear and traverse the same; and if any of the occupants above mentioned, or any other person aggrieved thereby, shall traverse the inquisition taken on the writ by this act directed to be issued, and if any issue shall be joined thereupon, the record thereof shall be sent into the supreme court, who shall direct the same to be tried at the next or any subsequent circuit court to be held in and for the county in which the lands affected thereby, are situate; and on such trial, it shall be incumbent on the prosecution in behalf of this state, to prove all such matters as are requisite in judgment of law, to establish any such escheat, without prejudice to the defendant, from the finding of the inquest in any such case; and if the judgment shall be given thereupon for this state, then a writ shall be issued out of the same supreme court, to the sheriff of the same county, commanding him to seize and take the lands, tenements and hereditaments, whereof the person named in such inquisition shall be found to have died seized, as aforesaid, into his hands; but if no such traverse shall be taken to such inquisition, before the end of the term next after the time limited in the second section of this act, then such writ shall immediately thereafter be issued out of the court of chancery, commanding the sheriff to seize and take the same lands, tenements and hereditaments; and upon the return of such writ of seizure, the attorney general shall cause the record and proceedings to be exemplified under the seal of the court out of which the same writs of seizure issued, and deposit such exemplification in the office of the secretary of this state; and the treasurer of this state shall thereupon cause the said lands, tenements and hereditaments to be sold at public vendue; and he shall give at least six weeks' previous notice of the time and place of such sale, by publishing the same in one of the newspapers printed at Trenton, in this state, and also in three of the most public places of the county where the said lands, tenements and hereditaments shall lie, for the term of four weeks next preceding the time of such sale; which sale, however, shall be subject to adjournment by the treasurer for any time, in the whole, not exceeding two months; and the treasurer shall, upon such sale, give the purchaser a certificate containing the name of the purchaser, and a description of the bounds of the lands, tenements and hereditaments purchased, and the price to be

paid for the same; and the purchaser shall thereupon, and within thirty days thereafter, pay to the treasurer of this state the sum mentioned in such certificate; and the treasurer shall thereupon endorse a receipt for the same upon such certificate, and, upon producing the same certificate and receipt to the attorney general, he shall make, execute and deliver, in the name of this state, a deed to such purchaser for the lands, tenements and hereditaments in the same certificate mentioned, granting and conveying an estate of inheritance in the said lands, tenements and hereditaments to such purchaser, and to his heirs and assigns for ever; and, upon the production of such deed to the sheriff, he shall deliver the possession of the said lands, tenements and hereditaments to the purchaser thereof.

Attorney general to make conveyances.

4. That jurors and witnesses in every case of escheat, shall be entitled to the like compensation, as is authorized by law for attending in causes commenced in the supreme court; and that the expenses of conducting the said proceedings, shall be made out by the treasurer, and, when approved of by the legislature, shall be paid by him.

Compensation to be made by the state for certain services.

5. That it shall be the duty of the attorney general, in case of any waste done or committed on any lands, tenements and hereditaments which have escheated or may escheat to this state, to apply to the court of chancery for an injunction to restrain all such waste; and further, that the person or persons committing any such waste or other trespass upon such property, shall be liable in damages for the same, to be sued for and recovered, in the name of the state, by action of trespass, in any court having cognizance thereof.

Injunction to restrain waste, etc.

Evidence.

I. WITNESSES.

1. COMPETENCY AND EXAMINATION OF.

1. Not disqualified by conviction of crime.
2. Party may be called by adverse party, when.
3. Interest no disqualification.
4. Party in a representative capacity.
5. Husband and wife competent.
6. Complainant competent to disprove answer.
7. Person whose name is forged, competent.
8. Person indicted may testify.
9. Interest or conviction of crime may be proved by witness.
10. Witness when excused from answering.
11. Testimony of parties may be taken by deposition.
12. Testimony of a deceased party at a former trial.

2. PROCESS FOR. PRIVILEGE.

13. Process. Penalty for disobeying.
14. Subpoena to run into every county.
15. Privilege from arrest.

II. EVIDENCE IN PARTICULAR CASES.

16. Fraud in consideration pleadable.
17. Non-summmons may be shown in action on foreign judgment.
18. Omission to plead plene administravit.
19. Comparison of hand writing.
20. Certificate of notary when conclusive; how disputed.
21. In prosecution for libel, truth may be given in evidence.
22. Statutes of other states.
23. Reports of other states.

III. INSPECTION OF PROPERTY.

24. Inspection of premises or chattels.

IV. DEPOSITIONS.

1. OF WITNESSES WITHIN THIS STATE.

25. May be taken before certain officers.
26. Witness compelled to appear.
27. How taken and filed.
28. Oath of person transmitting.

2. OF WITNESSES OUT OF THE STATE.

29. Commission when and by whom issued.
30. Names of witnesses to be inserted; interrogatories.
31. Notice of application for, how served.
32. Commission on short notice.
33. Oath of commissioner.
34. How examination taken.
35. How commission returned.
36. Party may receive and deliver it.
37. Return of foreign commission.
38. Testimony of non-resident taken on notice instead of by commission; notice; examination.
39. To what courts statute applicable.

3. MISCELLANEOUS PROVISIONS.

40. Exhibits may be annexed to depositions.
41. In supreme court may be sent to judge or clerk of circuit.
42. Examination to be read in evidence.
43. To be subject to objections.
44. To be paid for by party taking it.
45. Parties may have copies.
46. Taking out a commission not a stay.

V. EXAMINATION BEFORE COMMITTEES.

47. Committees may issue subpoenas and administer oaths.
48. Fees of witnesses.

VI. COMMISSIONS OUT OF COURTS OF OTHER STATES.

49. Process for, how obtained.
50. How served.
51. Copy of the official record of notaries public of other states, evidence.
52. In actions on sealed instruments, seal only presumptive evidence of consideration.
53. Committees of Legislature to have power to summon witnesses.
54. Committees empowered to compel attendance of witnesses.
55. May issue warrant of arrest.