

as aforesaid; and any person so offending shall be guilty of a misdemeanor, and on conviction thereof shall be fined any sum not exceeding two thousand dollars; *provided*, nothing in this section shall be so construed as to prevent the completing, rebuilding or repairing any powder mill now erected or erecting in this state on the site on which the same shall be now erected or erecting.

2. That no person or persons hereafter shall be permitted to erect or cause to be erected any powder magazine within this state, either upon his own land or the land of any other person, and actually deposit gunpowder therein, within the distance of half a mile from any town or village, house of public worship, dwelling house, or out-house; and any person so offending shall be guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding the sum of two thousand dollars.

### Supplement.

Approved February 23, 1850. P. L. 1850, p. 115.

3. SEC. 1. That the second section of the act to which this is a supplement, be so modified as to allow any person or persons to erect fire-proof magazines for storing not more in quantity than one hundred kegs of gunpowder, of twenty-five pounds each, at any one time, one-fourth of a mile from any town or village, house of public worship, dwelling house, or out-house.

## Habeas Corpus.

### I. WHO ENTITLED TO THE WRIT.

1. Who may sue out writ.
2. Who may not.

### II. THE APPLICATION FOR THE WRIT, ITS FORM, ETC.

3. Application for writ.
4. Contents of petition for writ, and how verified.
5. Writ to be granted forthwith.
6. Form of writ.
7. Not to be disobeyed from defect of form.
8. How writs sealed and certified.

### III. SERVICE OF THE WRIT.

9. Service of writ.
10. *Ib.* when person conceals himself.
11. Fees must be tendered; when bond required.
12. Last section not applicable when state is actor.
13. Officers, etc., to obey writs served on them.

### IV. RETURN OF WRIT AND PROCEEDINGS THEREUPON.

14. Return, when to be made.
15. Contents of return.
16. Person making return may be examined.
17. Prisoner must be produced, unless in case of sickness.
18. Proceedings in case writ is disobeyed.
19. Proceedings if attachment is issued against sheriff.
20. Prisoner to be produced.
21. Power of the county when called in aid.

### V. HEARING ON RETURN OF WRIT AND ORDER TO DISCHARGE OR REMAND.

22. The hearing on return.
23. When prisoner to be discharged and when remanded.
24. If committed on criminal charge, court, etc., may inquire into cause.
25. If process founded on contract, inquiry to be made.
26. The right to writ in such a case.
27. Notice to parties interested.
28. All persons bailable entitled to writ.
29. Production of person may be waived.

30. Proceedings to take bail.

31. Recognizance and certificate of commissioner to be filed.

32. Custody of prisoner pending proceedings.

33. In case of sickness of prisoner.

### VI. EFFECT OF DISCHARGE, PENALTIES, ETC.

34. Prisoner not to be re-imprisoned for same cause.
35. Penalty for re-imprisoning.
36. Penalty for removing, etc., prisoner to elude writ.
37. Penalty for persons assisting.
38. Penalty for refusing to obey writ.
39. Punishment.

### VII. MISCELLANEOUS PROVISIONS.

40. Duty of justice of supreme court to issue writ.
41. Warrant if prisoner is about being carried out of state.
42. Warrant for person detaining him.
43. Service of warrant.
44. Proceedings against person detaining prisoner.
45. Prisoners not to be removed from prison except by habeas corpus, etc.
46. To prevent and punish illegal imprisonments of citizens of this state carried out of state.
47. Limitation of suits.
48. General issue may be pleaded.
49. Prisoner not to be removed after opening of oyer and terminer.
50. Information not to be exhibited.
51. Discharge on criminal charge not to affect civil process.
52. Prisoner entitled to speedy trial.

### VIII. RIGHT OF APPEAL.

53. In criminal cases the prisoner may appeal; in civil cases either party.
54. On appeal prisoner may be discharged or re-committed.
55. Act not to apply to habeas corpus ad testificandum.
56. Act to be liberally construed.

### IX. FEES.

57. Fees of officers for services.

**An act for preventing the injury of illegal confinement, and better securing the liberty of the people.**

R. S. 285, 995.

Revision—Approved March 27, 1874.

P. L. 1861, p. 161.

**I. Who entitled to the writ of habeas corpus.**

Who may sue out writ.

1. That every person committed, detained, confined or restrained of his liberty, within this state, for any criminal, or supposed criminal matter, or under any pretence whatsoever, except in the cases in the next section specified, may prosecute a writ of *habeas corpus*, according to the provisions of this act, to inquire into the cause of such imprisonment or restraint.

Who may not.

2. The following persons shall not be entitled to prosecute such writ:

I. Persons committed or detained by virtue of any process issued by any court of the United States, or any judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or shall have acquired exclusive jurisdiction by the commencement of suits in such courts.

II. Persons committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon such judgment or decree, unless such judgment or decree be founded upon contract; but no order of commitment for any alleged contempt, or upon proceedings as for contempt, to enforce the rights or remedies of any party, shall be deemed a judgment or decree within the meaning of this section; nor shall any attachment or other process issued upon any such order, be deemed an execution within the meaning of this section.

III. Persons in custody or detained for any capital crime, plainly and specially expressed in the warrant or commitment, unless the court or judge to whom the application may be made shall, as an act of discretion, direct the writ to issue.

**II. The application for the writ, its form, &c.**

Application for writ.

3. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, as follows:

Contents of petition for writ, and how verified.

I. To the supreme court during its sitting; or,

II. During any term or vacation of the supreme court, to the chief justice, or to any one of the associate justices thereof, at chambers.

4. The petition must state in substance:

I. That the person in whose behalf the writ is applied for is imprisoned or restrained in his liberty; the officer or person by whom he is so confined or restrained, and the place where; naming both parties, if their names are known, or describing them, if they are not.

II. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party.

III. If the confinement or restraint is by virtue of any warrant, order, process, or commitment, a copy thereof must be annexed; or it must be averred that by reason of such prisoner's being removed or concealed before the application, a demand of such copy could not be made; or that such demand was made, and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused.

IV. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

V. It must be verified by the oath of the party making the application.

Writ to be granted forthwith.

5. The court or justice to whom such petition shall be presented shall grant such writ without delay, unless it shall appear from the petition itself, or from the documents annexed, that the party applying therefor is, by the provisions of this act, prohibited from prosecuting such writ; the writ shall be made returnable forthwith.

Form of writ.

6. Every writ of *habeas corpus* issued under the provisions of this act shall be substantially in the following form:

“The State of New Jersey to the Sheriff of, &c. (or to A. B.): We command you that you have the body of C. D., by you imprisoned and detained, as it is said, by whatsoever name the said C. D. shall be called

or charged, before our justices of our supreme court, &c. (or before E. F., justice, &c.), at, &c., immediately after the receipt of this writ, to do and receive what shall then and there be considered concerning the said C. D. And have you then there this writ. Witness, &c."

7. Such writs of *habeas corpus* shall not be disobeyed for any defect of form.

Not to be disobeyed from defect of form.

8. All writs of *habeas corpus* shall be under the seal of the supreme court, and shall be endorsed with a certificate that the same has been allowed and with the date of such allowance; and which endorsement, if the writ be awarded by the court, shall be signed by the chief justice, or, in his absence, by the presiding officer of such court; if it be awarded by a justice of said court, the endorsement shall be signed by him.

How writ sealed and certified.

**III. The service of the writ.**

9. Every writ of *habeas corpus* issued under this act, may be served by delivering the same to the person to whom it is directed; if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined, with an under officer, or other person of proper age, having charge for the time of such prisoner.

Service of writ.

10. If the person upon whom such writ ought to be served, conceals himself, or refuses admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling house, or of the place where the party is confined.

Id.—where person conceals himself.

11. The service of the writ shall not be deemed complete, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable, marshal, keeper of the jail, or other officer, the fees allowed by law for bringing up such prisoner, together with the charges for carrying him back; nor unless he shall give bond to such sheriff, coroner, constable, marshal, or other officer, as the case may be, when, in the order allowing such writ, a bond is required to be given in a penalty double the amount of the sum for which such prisoner shall be detained, if he be detained for any specific sum of money, and if not, then in the penalty of one thousand dollars conditioned that such prisoner will not escape by the way, either in going to or returning from the place to which he is to be taken; and if said prisoner shall be discharged, such officer shall repay the moneys, which he may have received, for the charges of carrying back such prisoner.

Fees must be tendered.

And bond, when required.

12. But the last section shall not apply to any case where the writ is sued out by the attorney general, or by any prosecutor of the pleas, or where the court or justice acts therein on his own motion.

But not applicable when writ sued out in behalf of state.

13. It shall be the duty of every sheriff, coroner, constable, marshal, or keeper of the jail, or other officer, upon whom a writ of *habeas corpus* shall be served, whether such writ be directed to him or not, upon payment or tender of the charges allowed by law as aforesaid, and the delivery or tender of the bond herein prescribed, whenever such bond is requisite, to obey and return such writ according to the exigency thereof; and it shall be the duty of every other person upon whom such writ shall be served, having the custody of the individual for whose benefit the writ shall be issued, to obey and execute such writ, according to the command thereof, without requiring any bond or the payment of any charges, unless the payment of such charges shall have been required by the officer issuing such writ.

Officers, &c., to obey writs served on them.

**IV. The return of the writ, and the proceedings thereupon.**

14. The person upon whom any such writ shall have been duly served, shall return the same forthwith according to the command thereof, if the place at which the prisoner is to be produced be within twenty miles of the place of service of the writ, such return shall be made and such prisoner shall be produced within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Return, when to be made.

15. The return shall state plainly and unequivocally:

Contents of return.

I. Whether he has, or has not the party in his custody or under his power or restraint.

II. If he has the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large.

III. If the party be detained by virtue of any writ, warrant or other written authority, a copy thereof shall be annexed to his return; and the original shall be produced and exhibited on the return of the writ, to the court or justice before whom the same is returnable.

IV. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place; the return must be signed by the person making the same, and except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by his oath.

Person making return may be examined.

16. If, upon the return coming in, the court or justice shall deem it advisable so to do, he may examine under oath the officer or person making such return, with respect to the subject matter thereof.

Prisoner must be produced. Unless in case of sickness.

17. If a writ of *habeas corpus* be issued, the officer or person on whom it shall have been served, shall also bring in the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Proceedings in case writ is disobeyed.

18. If the person upon whom such writ of *habeas corpus* shall have been duly served shall refuse or neglect to obey the same, by producing the party named in such writ of *habeas corpus*, and making a full and explicit return thereto, within the time required by this act, and no sufficient cause be shown for such refusal or neglect; it shall be the duty of the court or justice before whom such writ has been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county within this state, and commanding him forthwith to apprehend such person, and to bring him immediately before such court or justice; and on such person being so brought, he shall be committed to close custody, in the jail of the county in which such court or justice shall be, until he shall make return to such writ, and comply with any order that may be made by such court or justice in relation to the person for whose relief such writ shall have been issued.

Attachment to issue.

Proceedings if attachment is issued against sheriff.

19. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner, or other person, to be designated therein, who shall have full power to execute the same; and such sheriff, upon being brought up, may be committed to the jail of any county other than his own.

Prisoner to be produced.

20. The court or justice by whom any such attachment may be issued, may also, at the same time or afterwards, issue a precept to the same sheriff, or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such court or justice, the party for whose benefit such writ of *habeas corpus* shall have been allowed; who shall thereafter remain in the custody of such sheriff or person, until he shall be discharged, bailed or remanded, as such court or justice shall direct.

Power of the county when called in aid.

21. In the execution of such attachment or precept, or either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county as in other cases.

#### V. The hearing on the return of writ and order to discharge or remand.

The hearing on return.

22. The court or justice before whom the party shall be brought on such writ of *habeas corpus*, shall immediately after the return thereof, proceed to examine said return and the facts as set forth therein, whether the same shall have been upon process or commitment for any criminal, or supposed criminal matter or not.

When prisoner to be discharged.

23. If no cause be shown for such imprisonment or restraint, or for the continuation thereof, such court or justice shall discharge such party from the custody or restraint under which he is held; but if the party be not

entitled to his discharge, and be not bailed, the court or justice shall remand him to the custody, or place him under the restraint, from which he was taken, if the person under whose custody he was, be legally entitled thereto; if not so entitled, he shall be committed by such court or justice to the custody of such other officer or person, as by law is entitled thereto.

When remanded.

24. If it appears that the party has been arrested or committed for some criminal offence, or supposed criminal offence, it shall be lawful for the court or justice in its or his discretion, to enquire into the cause and grounds of the confinement or restraint of such party; and for this purpose may summon witnesses and take their depositions; and may by an order in writing require, of any person, the production of all affidavits, documents and writings relative to the premises; and if upon such examination it shall appear that such party is not entitled to his discharge, he shall be bailed or remanded in the manner directed in the next preceding section; when this course is taken the party shall not be entitled to his discharge by reason of any informality or insufficiency in the original arrest or commitment.

If committed on criminal charge, court, &c., may inquire into cause.

May take evidence.

25. When it appears by the return, or otherwise, that the prisoner is in custody by virtue of civil process, issued out of any court of law or equity in this state, whether such process be a *capias ad respondendum* or *capias ad satisfaciendum*, or other precept whatsoever, in any action of debt, or other action or proceeding, founded on contract, express or implied, it shall be lawful for the said court or justice to make an order for the taking of testimony concerning the truth of the affidavit, or affidavits, and proofs upon which the order for said writ was made, and said writ was issued; which testimony shall be taken orally before said court or justice, or in writing before any supreme court commissioner; which testimony, when taken before such commissioner, shall be filed in the office of the clerk of the supreme court; and if from the testimony so taken, the said court or justice shall be of opinion that the said writ was improperly or improvidently issued, or should not have been issued, against the defendant therein, the said court or justice shall order the defendant to be discharged; in case said imprisonment shall be upon a *capias ad respondendum*, the said court or justice may order the defendant to be discharged upon common bail, and may take such order for his discharge from arrest or imprisonment, and the discharge of his bail, as the nature of the case may require, and as may be deemed equitable and just.

If process be founded on contract, inquiry to be made.

P. L. 1861, p. 161. Amended.

26. That when any person is arrested or detained by virtue of the process mentioned in the preceding section, he shall have a right to a writ of *habeas corpus* as provided for in this act.

Right to writ in such case. Ib.

27. When it appears, on the return of a writ of *habeas corpus*, that the party named therein is in custody on any civil process, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it shall appear that the party so interested, or his attorney, if he have one, shall have such notice of the hearing under such *habeas corpus* as the court or justice allowing the same shall direct.

Notice to parties interested.

28. All persons who are or may be in confinement on a charge of a criminal offence, which is of a bailable nature, shall be entitled to a writ of *habeas corpus*, as provided for in this act, for the purpose of putting in such bail; and if, upon the return of said writ, it shall appear that the prisoner is entitled to be bailed, the said court or justice, within two days at the farthest after such return, shall discharge said prisoner from his imprisonment, taking his recognizance with one or more surety or sureties, in any sum at the discretion of said court or justice, having regard to the quality of the prisoner and the nature of the offence, for his appearance in the supreme court the term following, or at the next session of the court of oyer and terminer and general jail delivery of and for such county 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 shall then certify the said writ with the return thereof, and the said recognizance or recognizances, unto the said court, where such appearance is to be made.

All persons bailable entitled to writ.

Production of person may be waived.

29. When any person, who is imprisoned or who is under restraint, is desirous of testing the validity of the same, or of being discharged upon bail, without being brought in person before the said court or justice, he shall signify such desire in his petition for the writ; and thereupon, in the allowance of the said writ, a waiver of the production of the body shall be inserted; the return, and all other proceedings in other respects, shall be the same as in other cases, with the exception as to the mode of taking bail, which may be taken, in the discretion of the said court or justice, in the manner provided for in the next following section.

Proceedings to take bail.

30. In case of proceedings by force of the next preceding section, if it shall appear that the prisoner should not be discharged, but is entitled to be admitted to bail, the said court or justice, if it is deemed advisable so to do, is hereby empowered to direct, in writing, the sum for which such person shall be held to bail, and the court, and at what term thereof, at which he shall be required to appear; and in the same order shall authorize a supreme court commissioner to take the recognizance of the person so imprisoned, and of two sufficient sureties, in the sum so specified, with a condition for the appearance of such prisoner at the court designated in such order, and that he will not depart from such court without leave; but previous to taking such recognizance, such commissioner shall be satisfied, by the oath of the persons offering themselves as sureties, that they are residents in the county in which the court before which the prisoner is to appear is held, and are severally worth double the sum in which they shall be required to be bound, over and above all demands against them; and such recognizance so taken, shall be as valid and effectual as though legally taken before the supreme court.

Before supreme court commissioner.

Recognizance valid.

Recognizance and certificate of commissioner to be filed.

31. The said supreme court commissioner shall file the said recognizance, and the order by virtue of which the same has been taken, with the clerk of the court before which the prisoner shall be bound to appear, and shall certify on such order, under his official signature, the compliance therewith; the production of such order, so certified, or a copy thereof duly certified under the hand of said clerk, shall entitle such prisoner to be discharged from imprisonment for the cause mentioned therein.

Discharge.

Custody of prisoner pending proceedings.

32. Until judgment be given upon the return to a *habeas corpus*, the court or justice before whom such party shall be brought may either commit such party to the custody of the sheriff of the county in which said court or justice shall be, or place him in such care or under such custody as the circumstances of the case may require.

In case of sickness of prisoner.

33. Whenever, from the sickness or infirmity of the person directed to be produced by any writ of *habeas corpus*, such person cannot, without danger, be brought before the court or justice, the party in whose custody he is may state that fact in his return, verifying the same by his oath; and if such court or justice be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return, and to dispose of the matter, in the same manner as if such person had been produced.

#### VI. Effect of discharge; penalties, etc.

Prisoner not to be re-imprisoned for same cause.

34. No person who has been discharged by the order of said court or justice, upon a *habeas corpus* issued pursuant to the provisions of this act, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause—

What not same cause.

I. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence, by the legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offence; or,

II. If after a discharge for defect or proof, or for any material defect in the commitment, in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offence; or,

III. If, in a civil suit, the party has been discharged for any illegality in the judgment or process, hereinbefore specified, and is afterwards imprisoned by legal process for the same cause of action; or,

IV. If, in a civil suit, he shall have been discharged from commitment

on mesne process, and shall afterwards be committed on execution, in the same cause, or on mesne process, in any other cause, after such first suit shall have been discontinued; or,

V. If the prisoner, having been discharged, shall be re-committed, on a reversal of the order of discharge, by a court having the right to review such order.

35. If any person, either solely, or as a member of any court, or in the execution of any order, judgment or process, shall knowingly re-commit, imprison or restrain of his liberty, or cause to be re-committed, imprisoned or restrained of his liberty, for the same cause, except as provided in the last section, any person so discharged, or who shall knowingly aid or assist therein, he shall forfeit to the party aggrieved the sum of fourteen hundred dollars, to be recovered in an action of debt in any court having jurisdiction thereof, and shall be guilty of a misdemeanor. Penalty for re-imprisoning.

36. If any one having in his custody or under his power any person for whose relief a writ of *habeas corpus* shall have been duly issued, pursuant to the provisions of this act, who, with intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be guilty of a misdemeanor. Penalty for removing, &c., prisoner to elude writ.

37. Every person who shall knowingly aid or assist in the violation of either of the last two preceding sections, shall be deemed guilty of a misdemeanor. Penalty for persons assisting.

38. If any officer or other person shall neglect or refuse to make the returns aforesaid, or any of them, or to bring the body of the prisoner according to the command of the said writ, or, upon demand made by the prisoner, or by any 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, all and every such officer and persons so refusing or neglecting shall forfeit and pay to the party aggrieved the sum of five hundred dollars, and shall be guilty of a misdemeanor. Penalty for refusing to obey writ.

39. Every person convicted of a misdemeanor under either of the last four sections, shall be punished by a fine or imprisonment, or both, at the discretion of the court in which he shall be convicted; but such fine shall not exceed one thousand dollars, nor such imprisonment six months. Punishment.

#### VII. Miscellaneous provisions.

40. Whenever the supreme court, or any justice thereof, shall have evidence from any judicial proceeding had before them, that any person within this state, is illegally confined and restrained of his liberty, it shall be the duty of such court or justice, to issue a writ of *habeas corpus*, for his relief, although no petition be presented or application made for such writ. Duty of justice of supreme court to issue writ.

41. Whenever it shall appear by satisfactory proof, that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the state, or suffer some irreparable injury, before he can be relieved by the issuing of a *habeas corpus*, any justice of the supreme court may issue a warrant under his hand and seal, reciting the facts and directed to any sheriff, constable or other person, and commanding such officer or person to take such prisoner, and forthwith to bring him before such court or justice, to be dealt with according to law. Warrant if prisoner is about being carried out of state.

42. When the proof mentioned in the last section, shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence committed in the taking or detaining of such prisoner, the warrant may also contain an order for the arrest of such person, for such offence. Warrant for person detaining him.

43. Any officer or person to whom such warrant shall be directed, shall execute the same, by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the court or justice issuing the same; and thereupon the person detaining such prisoner shall make a return, in like manner, and the like proceeding shall be had as if a writ of *habeas corpus* had been issued in the first instance. Service of warrant.

Proceedings  
against person  
detaining pris-  
oner.

Prisoner not to  
be removed from  
prison, except by  
habeas corpus,  
&c.

R. S. 23, § 9.

To prevent and  
punish illegal  
imprisonments  
of citizens of this  
state carried out  
of state.  
Ib. § 11.  
Amended.

Damages not less  
than \$1,500.

Proviso.

Limitation of  
suits.  
Ib. § 12.

General issue  
may be pleaded.  
Ib. § 13.

44. If the person having such prisoner in his custody shall be brought before such justice, as for a criminal offence, he shall be examined, committed, bailed or discharged in like manner as in other criminal cases of the like nature.

45. If any person shall be committed to any prison, or in the custody of any officer or person whatsoever, for any criminal or supposed criminal matter, the said person shall not be removed from the said prison or custody, into the custody of any other officer or person, unless it be by *habeas corpus*, or some other legal writ or process, or where the prisoner is delivered to the constable or other inferior officer, or where any person is sent by order of any court, or judge 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 trial, or discharge, in due course of law, or in case of sudden fire or infection, or other necessity; and if any person, shall after such commitment aforesaid, make out, or sign, or countersign any warrant for such removal, contrary to this act, as well he who makes, or signs or countersigns such warrant, as the officer or person who obeys or executes the same, shall, for every such offence, forfeit to the prisoner or party grieved the sum of five hundred dollars, to be recovered in the manner aforesaid.

46. And for preventing illegal imprisonment of citizens of this state in prisons out of this state, no citizen of this state, who now is, or hereafter shall be, an inhabitant of, or resident within this state, shall or may be sent prisoner to any place whatsoever out of this state, for any crime or offence committed within this state, and every such imprisonment is hereby declared to be illegal; and if any of the said citizens now is, or hereafter shall be, so imprisoned, such prisoner so imprisoned shall and may, for every such imprisonment, maintain by virtue of this act, an action or actions of false imprisonment in any court of record having cognizance of such actions, against the person or persons by whom he shall be so committed, detained, imprisoned, sent prisoner or transported contrary to the true intent and meaning of this act, and against all or any person or persons who shall frame, contrive, write, seal, sign, or countersign any warrant or writing for such commitment, detainer, imprisonment or transportation, or shall be advising, aiding or assisting in the same or any of them; and the plaintiff in every such action shall have judgment to recover double costs, besides damages, which damages, so to be given, shall not be less than fifteen hundred dollars; and the person or persons who shall knowingly frame, contrive, write, seal, sign or countersign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison or transport any person or persons contrary to this act, or be anywise advising, aiding, or assisting therein, being lawfully convicted thereof, shall from thenceforth be disabled to bear any office of trust or profit under this state, and shall be fined or imprisoned at hard labor, or both, at the discretion of the court before which the conviction shall be had; *provided also*, if any citizen of this state, or person at any time resident in the same, shall have committed any treason, felony, or misdemeanor in any other of the United States, or in any foreign country, where he ought to be tried for such offence, such citizen or person may be sent to such state or foreign country having jurisdiction of such offence, there to receive such trial, in the same manner as he might have been sent before the making of this act.

47. No person shall be sued or impleaded for any offence against this act, unless the party offending be sued or impleaded for the same within two years at farthest, after such time wherein the offence shall be committed; but if the party grieved shall be in prison, by reason of such wrongful act, then within the space of two years after the decease of such party while in prison, or his deliverance out of prison, whichever shall happen first.

48. If any information, suit or action, shall be brought or exhibited against any person or persons for any offence committed against this act, it shall be lawful for such defendant to plead the general issue that they are not guilty, or that they owe nothing, and to give the special matter in evidence; and if such special matter, in case it were duly pleaded, had



been good and sufficient in law to discharge the said defendant or defendants against the said information, suit or action, the same, so given in evidence, shall be as available to them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alleged the said matter, in bar or discharge of such information, suit or action.

49. And to the intent that no person may avoid his trial at the sessions of oyer and terminer, or general jail delivery, by procuring his removal at such time before the commencement of the court, as he cannot be brought back to receive his trial at the same court after the sessions of oyer and terminer, or general jail delivery, shall be proclaimed for that county where the prisoner is detained, such prisoner shall not be removed from the common jail upon *habeas corpus* granted in pursuance of this act; but, upon any such *habeas corpus*, shall be brought before the justice or justices of the said court of oyer and terminer, or general jail delivery, in open court, who shall thereupon do what to justice appertains; *provided*, after the sessions of oyer and terminer, or general jail delivery, are ended, any person detained may have his or her *habeas corpus*, according to the direction of this act.

Prisoner not to be removed after opening of oyer and terminer. *Ib.* § 14.

50. No information, for a matter merely criminal, for which an indictment will lie, and in which no civil right is involved, nor forfeiture or penalty given by law to any private person or common informer, is prosecuted for, shall, from and after the passing of this act, be exhibited or sustained in any court of this state.

An information cannot be exhibited. *Ib.* § 15.

51. Nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or on process in any civil cause, unless by virtue of the proceeding herein for that purpose specially provided; and a discharge, under this act, from imprisonment under a criminal charge, shall not have that effect; but the party so discharged shall be kept in custody according to law in such civil suit.<sup>(a)</sup>

Discharge on criminal charge not to affect civil process. *Ib.* § 8. Amended.

52. If any person shall be committed for treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery, forgery, or larceny, or for rescues, or voluntary escapes in any such case, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer, or 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 justices of the supreme court, 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, session, or jail delivery, either by the prisoner or any one in his behalf, to set at liberty such prisoner upon bail; unless it appear to the justices, upon oath or affirmation made, that the witnesses against the prisoner could not be produced the same term, sessions, or general jail delivery; and if any person 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 terminer, or general jail delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer, or general jail delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

Prisoner entitled to a speedy trial. *Ib.* § 7.

Or discharge.

VIII. Right of appeal.

53. All proceedings commenced under this act before a justice of the supreme court, may be removed, after final decision by such justice, by *certiorari* into the supreme court, that is to say, if the imprisonment is for an alleged crime, and the decision is against the right of the prisoner to a discharge, the prisoner may remove such proceeding; if on civil process either party may do so; in like manner the final decision of the supreme court thereon may be removed, by writ of error into the court of errors and appeals; *provided, however*, that if a discharge has been awarded, such appeal shall not stay such discharge.

In criminal cases the prisoner may appeal.

In civil cases either party.

(a) *Habeas corpus* cannot be allowed at chambers where the writ on which the defendant is detained is legal, and the court which issued it of competent jurisdiction. *Peltier v. Pennington*, 2 Gr. 312. An insolvent will be discharged

from confinement if arrested after his insolvent discharge on a judgment on a debt contracted before such discharge, *State v. Ward*, 3 Hal. 120. See *State v. Sheriff of Middlesex*, 3 Gr. 68.

On appeal prisoner may be discharged or re-committed.

54. The supreme court, and the court of errors and appeals in the last resort, shall respectively have the power to make such orders and to direct all such writs out of the supreme court, as may be necessary, for the discharge or recommitment of such prisoner, according to the judgment which shall be severally given by said courts; and generally to carry such judgment into effect.

Act not to apply to habeas corpus ad testificandum. To be liberally construed.

55. The provisions of this act shall not apply to the writ of *habeas corpus* when used to bring a prisoner before a court as a witness.

56. This act shall be liberally construed so as to secure, as far as possible, the liberty of the citizen.

#### IX. Fees.

Fees of officers for services.

57. The following fees shall be allowed for services performed under this act:

To sheriff or other officer for making return, two dollars;

Mileage for himself and prisoner going and returning, at the rate of four cents a mile for each;

Court of justice granting writ, two dollars;

Taking recognizance, one dollar;

To justice taking examination of witnesses on return of writ, three dollars per diem;

If same taken before a commissioner, the same fees as in like cases.

[If writ shall be granted by court or justice on their own motion, no fees shall be allowed].

### Heirs and Devisees.

1. Creditors may maintain actions against heirs and devisees.
2. Heir liable for lands descended.
3. Pleadings, judgment, execution.

4. Devisees liable in like manner.
5. Proceedings in case of non-residence of heir and devisee.
6. Judgment against non-residents.

Rev. 291.

#### An act for the relief of creditors against heirs and devisees.

R. S. 83.

Passed March 7, 1797.

Creditors may maintain action on special and simple contracts against heirs and devisees.

1. That all and every creditor or creditors, whether by simple contract or specialty, and whether the heirs are mentioned therein or not, shall and may, by virtue of this act, have and maintain his, her and their action and actions, against the heir and heirs at law of any debtor who hath already died, or shall hereafter die intestate, seized of any messuages, lands, tenements or hereditaments, and against the heir and heirs at law, and devisee and devisees of such debtor, in case such debtor made any last will and testament; and such heir and heirs, devisee and devisees shall be liable and chargeable for a false plea by him, her or them pleaded in the same manner as any heir should have been for any false plea, by him pleaded, in any action of debt upon specialty, or for not confessing the lands or tenements to him descended; and, moreover, all such creditors shall be preferred as in actions against executors and administrators. (a)

If the heir alien land descended to him before action brought, he shall be liable to the value of the land.

2. That in all cases, where any heir or heirs at law is, are, or shall be liable to pay the debt of his, her or their ancestor, in regard of any lands, tenements or hereditaments, descending to him, her or them, and shall sell, alien, or make over the same, before any action brought, or process sued out against him, her or them, such heir and heirs at law shall be answerable for such debt, to the value of the said lands, tenements or hereditaments, so by him, her or them sold, aliened or made over; in which cases, all creditors shall be preferred, as in actions against executors and administrators; and further, such execution shall be taken out upon any judgment so obtained, against such heir or heirs, to the value of the said lands, tenements

(a) An action of *covenant* will lie against heirs and devisees for the breach of a covenant against encumbrances contained in a conveyance of the ancestor, *New Jersey Ins.*

*Co. v. Meeker*, 8 Vt. 282. See 4 *Grif. Reg.* 1286-9. The heirs of a deceased heir having lands by descent, should be joined, *St. Mary's Church v. Wallace*, 5 Hal. 311.