

before him, a like certificate shall be annexed to his certificate of the taking of such oath; and if any such oath, affirmation or affidavit, or any material part thereof, shall be untrue, any person who shall use or offer the same for any purpose whatever, knowing the same to be untrue, shall be guilty of a high misdemeanor, and shall upon conviction thereof suffer the same punishment as if convicted of subornation of perjury, and shall be subject to the same disabilities.

If such affidavit false, person using the same, knowing the falsity, guilty of a misdemeanor.

Supplement.

Approved March 31, 1875.

P. L. 1875, p. 47.

6. SEC. 1. That the act entitled "An act relative to oaths and affidavits," approved March twenty-seventh, one thousand eight hundred and seventy-four, be and the same is hereby amended by inserting the words "or any commissioner of deeds" after the words "notary public" in section one of said act.

Commissioners of deeds authorized to administer oaths.

Obligations.

I. SEAL.

1. Scroll good seal for certain purposes.

5. Real sum due and not penalty considered as the debt.
6. Payment after the stipulated debt may be pleaded.
7. Of bringing money into court.

II. ACTIONS ON.

2. Joint debtors separately answerable.
3. So of representatives of.
4. Payment may be pleaded in bar.

III. BONDS WITH SPECIAL CONDITIONS.

8. Assignment of breaches for non-performance of covenants.
9. On payment of damages assessed, execution stayed.

An act concerning obligations.

R. S. 801.

Revision—Approved March 27, 1874.

P. L. 1855, p. 296.
" 1870, p. 47.

I. Seal.

1. That every bond or other instrument in writing to which the obligor or person named therein, or who signed the same, shall have affixed a scroll, or ink, or other device, by way of a seal, shall be taken and adjudged to be of the same force and effect as if it was actually sealed with wax.

A scroll or other device by way of a seal, shall be of same force as if sealed with wax.

R. S. 801, § 1.

P. L. 1870, p. 47.
Amended.

II. Actions on.

2. All persons jointly indebted to any other person or persons, upon any joint contract, obligation, matter, or thing, for which a remedy might be had at law against such debtors, in case all were taken by process issued out of any court of this state, shall be answerable to their creditors separately for such debts; that is to say, such creditor or creditors may issue process against such joint debtors, and in case any of such joint debtors shall be taken and brought into court, by virtue of such process, such of them so taken and brought into court shall answer to the plaintiff or plaintiffs; and if judgment shall pass for the plaintiff or plaintiffs, he, she or they shall have his, her, or their judgment and execution against such of them so brought into court, and against the other joint debtor or debtors named in the process, in the same manner as if they had been all taken and brought into court by virtue of the said process. (a)

Joint debtors separately answerable.

R. S. 801, § 3.

How sued.

(a) Summons is well served on one of two joint debtors. *Reid v. Crawford*, Pen. *622. The original act (1771) entitled the plaintiff to judgment against all the joint debtors "named in the proofs," *Ford v. Munson*, 1 South. *93. Query, whether the alteration was a mistake in the engrossing or printing of the act of 1799, *Ibid.* To give the court jurisdiction, the return of the sheriff and the record should show that the absent defendant was not to be found in his bailiwick, *Ibid.* Where a *capias* was served on one of several joint defendants, and the plaintiff entered a waiver of bail on the minutes, filed his declaration and took judgment against all, they are not within the statute "brought into court," and after writ of inquiry the other defendants, on affidavit of merits, were allowed to open the judgment, *Gulick v. Thompson*, 1 South. *292. After a service of a summons on one defendant, the other defendant having been returned "not found," he may appeal in the name of both without summons and severance, *Pharo v. Parker*, 1 Zab. 332, 752. The act does not include actions of *trespass*,

McKelway ads. *Jones*, 2 Harr. 345. Where one is served and the other returned not found, judgment cannot be entered by default within sixty days from the return of process, by serving notice of filing the declaration on the defendant who was served, without also serving it upon the other, *McMurtrie v. Doughlen*, 4 Zab. 252. See *Schuyler v. McCrea*, 1 Harr. 248. In case of judgment by default against absent defendants published, the entry of the judgment should show how they were brought into court, *Stillwell v. Tomlinson*, 7 Vr. 359. The act applies to non-residents. *Harker v. Brink*, 4 Zab. 333. A non-resident could show, in a proceeding to enforce the judgment in this state, that he was not a joint debtor. *Ibid.* After service on one only and no appearance entered by the other, if the plaintiff declare and proceed to trial against both, and on the trial the contract appears to have been made with only one of the defendants, he should be non-suited. *Fleming v. Freese*, 2 Dutch. 263. The declaration need not state why process was not served on all, *American Thread Co. v. Sheldon*, 2 Vr. 421.

Representatives of one jointly bound chargeable as on joint and several obligations.
Ib. § 4.

Payment of debt may be pleaded in action of debt.
Ib. § 8.

Real sum due, and not penalty, considered as the debt.
Ib. § 11.

Judgment to be for penalty; to be discharged by payment of real sum unless retained as further security.
Ib. § 13.

Payment, after the stipulated day, may be pleaded.
Ib. § 9.

Pending action defendant may bring money into court with cost.
Ib. § 10.

Assignment of breaches on bonds for non-performance of covenants.
Ib. §§ 5, 6.

P. L. 1855, p. 296, § 28.

3. The representatives of one jointly bound with another for the payment of a debt, or for the performance or forbearance of any act, or for any other thing, and dying in the lifetime of the latter, may be charged, by virtue of such obligation, in the same manner as such representatives might have been charged, if the obligors had been bound severally as well as jointly.(a)

4. In an action of debt on a bond, or sealed bill, or in an action of debt, or *scire facias*, on a judgment, if the defendant hath paid the money due on such bond, bill, or judgment, such payment may be pleaded in bar.(b)

5. Where an action shall be brought on a bond, bill or other contract containing a penalty to secure or enforce the payment of money only, or if any bond, bill, or contract with such penalty as aforesaid, shall be set off by the defendant in any action, the sum really and in equity due on such bond, bill, or contract, and not the penalty, shall be deemed and taken to be the debt due; *provided*, that in all actions which shall be brought on any bond or obligation for the payment of money, wherein the plaintiff shall recover, judgment shall be entered for the penalty of such bond or obligation; to be discharged by the payment of the principal, or sum found by the verdict, as the case may require, with interest till paid, and costs, where costs ought to be awarded, unless it be proper that such judgment shall stand as a further security to the plaintiff, his executors and administrators.

6. In any action of debt on a bond, which hath a condition or defeasance to make void the same on payment of a less sum, at a day or place certain, if the obligor, his heirs, executors, or administrators have, before the action brought, paid to the obligee, his executors, administrators or assigns, the principal and interest due by the condition or defeasance of such bond, though such payment was not made strictly according to the condition or defeasance, yet it may be pleaded in bar, and shall be as effectual a bar to such action as if the money had been paid at the day and place, according to the condition or defeasance, and had been so pleaded.(c)

7. If at any time pending an action on any such bond, with a penalty, the defendant shall bring into the court, where the action shall be pending, all the principal money and interest due on such bond, and all such costs as have been expended in any suit or suits in law or equity upon the said bond, the said money, so brought in, shall be deemed and taken to be in full payment and satisfaction of such bond; and the court shall give judgment to discharge the defendant from the same accordingly.(d)

III. Bonds with special conditions.

8. In every action upon any bond, or for any penal sum for non-performance of covenants or agreements, contained in any indenture, deed, or writing, or upon any bond, with condition other than for the payment of money, the plaintiff may assign as many breaches as he shall think fit; and the jury, upon trial of such action, or on the execution of any writ of inquiry, in case of judgment on demurrer, or by confession or default, shall assess damages for such of the said breaches as have been broken; and on verdict therefor, the like judgment shall be entered as heretofore hath been usually entered in such action.(e)

(a) The statute does not extend to judgments, decrees or simple contract debts, *Wade v. Potter*, 2 Gr. 278. The representatives of one of the defendants in a joint judgment, who has died, may be sued, although the other defendant is living, *Harker v. Thompson*, 1 Vr. 311. If a surety pays the surety money, he may sue the representatives of a deceased co-surety for an aliquot part of the money so paid, *Stothoff v. Dunham*, 4 Harr. 181. Query, whether equity would grant relief against the representative of one of two joint debtors, without making the other joint debtor a party, *Hagen v. Durling*, 1 Gr. Ch. 133. Where in a suit against three makers of a joint and several note, one defendant dies *pendente lite*, the action survives against the other defendants, and cannot be continued against the survivors and the representatives of the deceased, *Fisher v. Allen*, 7 Vr. 203. Administrators of a deceased partner are not to be sued with survivors, *Hedden v. Van Ness*, Pen. *84. Joint action lies not against the obligor and the executors of his co-obligor in a sealed bill, *Garrabranti v. Interest*, Pen. *724.

(b) Payment may be pleaded in bar of a judgment, *Gulick v. Lodor*, 1 Gr. 68. But not in conjunction with *nul tiel record*, *Riley v. Riley*, Spen. 114.

(c) Upon a plea of payment, *post diem*, the defendant must establish first, the payment, and then its application to the bond in question, *Summers v. Lodor*, 7 Hal. 104. Where the money is payable in instalments, if the obligor fail to pay any instalment when due, an action lies on the bond, and the defendant cannot plead that he paid a part of the instalments after they became due, and that the remaining instalments are not yet due, *Rosenkrantz v. Durling*, 5 Dutch. 191. Where the condition is to pay a certain sum of money in articles of merchandise on a certain day, under a plea of payment at the day, a tender and refusal cannot be proved, *Grieve v. Annin*, 1 Hal. 461.

(d) The money cannot be brought into the supreme court where a suit on the mortgage is pending in chancery, *Leake v. Chambers*, 1 South. *33, note (a).

(e) Formerly the plaintiff could declare generally and assign breaches in his replication, *Chetwood v. State Bank*, 2 Hal. 32. *Van Vorst* ads. *Morris Canal Co.*, Spen. 167. *Infra*, PRACTICE OF LAW, § 125. In bonds other than for the payment of money, as an indemnity bond, judgment must be entered for the penalty, *Roll v. Maxwell*, 2 South. *493, note (a). See *Beatty v. Ivins*, Pen. *628.

9. If in any action brought upon any such bond, as is mentioned in the last preceding section, the defendant, after judgment entered, and before execution executed, shall pay into the court where the action is or shall be brought, to the use of the plaintiff, such damages, so assessed by reason of all or any of the breaches of such covenants, agreements or conditions, together with cost of suit, a stay of execution of the judgment shall be entered on record; and if by reason of any execution executed, the plaintiff shall be fully paid or satisfied all such damages so assessed, with cost of suit and legal charges for executing the said execution, the body, lands, and goods and chattels of the said defendant shall be thereupon forthwith discharged from the said execution which shall likewise be entered on record; but in every such case the said judgment shall, notwithstanding, remain as a security to the plaintiff, his executors and administrators, for any other breaches which may afterwards happen of such covenants, agreements, or conditions; upon which the plaintiff, or his executors, or administrators may have a *scire facias* against the defendant, his heirs, devisees, terretenants, executors or administrators, assigning other breaches, to summon him or them, respectively, to show cause why execution should not be had or awarded on the said judgment; and thereupon damages shall be assessed as aforesaid, and execution issued accordingly; and upon payment or satisfaction, in manner aforesaid, of such future damages, costs and charges as aforesaid, all further proceedings on the said judgment shall be stayed, and so on as often as the same shall happen, and the defendant, his body, lands, goods and chattels, shall be discharged from the said execution.

On payment of damages assessed execution stayed.

R. S. 801, § 7.

When discharge entered.

Plaintiff may have *scire facias* for future breaches.

[Assignment of bonds, see PRACTICE ACT, §§ 19, 20, 21. See title EVIDENCE, § 52].

Officers.

I. COMMISSIONS, RESIGNATIONS, ETC.

1. Residence and duty of officers.
2. Commission to be issued under penalty.
3. Resignations, how made.
4. Offices incompatible.
5. Justices of supreme court not to take office.
6. Notice of death of officer appointed by governor or joint meeting to be given to the governor.
7. Persons holding city or township offices to reside within the city or township. Exceptions.
8. Appointments in joint meeting.
9. Masters in chancery.
10. State directors, how appointed.
11. By whom vacancies to be filled.
12. Freehold qualification abolished.
13. When fiscal year of state officers to terminate.

II. OFFICIAL SEALS.

14. Seals and where deposited.
15. What to be seals of.
16. Instruments sealed held valid.

III. UNITED STATES SENATORS.

17. How appointed. Vacancies filled.

18. How commissioned.
19. When senators to be elected.
20. Mode of election.
21. Vacancy occurring before meeting of legislature.
22. Vacancy during session of legislature.
23. Election of senators certified.
24. Countersign of certificate.

IV. PRESIDENT OF SENATE.

25. President of senate to exercise powers of vice president of council.

V. STATE DIRECTOR.

26. Directors not to be stockholders.
27. To make annual report.
28. Not to receive office from companies.
29. To take oath.
30. Annual report to be made to governor on or before the 20th of January.

VI. PRIVATE SECRETARY OF THE GOVERNOR.

31. Governor may appoint private secretary.
32. Governor may employ assistance in executive department.

I. Commissions, resignations, etc.

An act relative to offices, commissions, and resignations.

Rev. 52, 208, 605.

Approved April 16, 1846.

R. S. 860.

1. That each and every person holding or who shall hereafter hold any office in this state, under the authority thereof, shall reside within this state and execute such office; and also, that every person holding an office, the authority and duties of which relate to a county only, shall reside within such county; and if any person holding or who shall hereafter

Residence and duty of officers.