

9. Each assessor shall, on or before the twentieth day of August next, and on or before the twentieth day of August in every such tenth year hereafter, cause the returns so certified, with a duplicate copy thereof carefully made and compared, and certified in the manner above specially provided, to be delivered to the county clerk of the county in which such assessor shall reside.

To deliver returns to county clerk.

10. Each county clerk shall, immediately after receiving such certified statements of the enumeration, and the duplicate copies of the same from the assessors in the several election districts in his county, transmit to the secretary of state by express, all the duplicate returns filed in his office, carefully boxed in such manner as to protect them; and if the assessor shall neglect for five days after the twentieth day of August to make his return as aforesaid, the clerk of the county in which he shall reside, shall immediately proceed himself, or despatch a messenger, to procure such return and duplicate, and the expense thereof shall be deducted from the account of such assessor, by the board of supervisors or board of chosen freeholders of the county in which he may reside, if they shall think proper.

County clerk to transmit to Secretary of State duplicate returns.

11. The secretary of state, after receiving such duplicate returns, shall prepare and report to the legislature, on or before the fifteenth day of January in each year succeeding the taking of such census, a general account of the enumeration, specifying the result thereof, in the several towns, wards, cities and counties of the state, with a full recapitulation of the whole.

Secretary of State to report to legislature.

12. The accounts for the services of the assessors done under this act, shall be audited by the board of supervisors or board of freeholders of the county where the services are performed, and shall be assessed, collected and paid as part of the contingent expenses of such city or county.

Assessor's accounts, how settled.

13. The assessors shall be entitled, as remuneration for their services, to fifty cents per hundred inhabitants enumerated as aforesaid, to be paid by the respective counties.

Compensation of assessors.

14. All liabilities incurred for printing, postage and transmission of returns, when audited by the proper officer, shall be paid by the treasurer and charged to a special account.

Printing, postage &c., how paid for.

Certiorari.

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| 1. May be allowed by judge in term or vacation. Judge may make orders thereon. | 8. Allowance of costs. |
| 2. Allowance of. | 9. Court in certain cases may determine questions of fact. May reverse or affirm in whole or in part. |
| 3. To be presented in open court. | 10. On reversal of assessment for public improvements, court may appoint commissioners to make a new assessment. |
| 4. On indictments. Recognizance required. | 11. Jurisdiction of circuit court. |
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An act relative to the writ of certiorari.

R. S. 200, 929, 983, 984.
 P. L. 1865, p. 799.
 " 1871, p. 124.
 " 1873, p. 165.

Revision—Approved March 27, 1874.

1. That writs of *certiorari* and of *supersedeas* may be allowed in term or vacation (a) by a justice or judge of the court, out of which they may issue, and such justice or judge is hereby authorized at any time to make all necessary orders thereon. (b)

May be allowed by judge in term or vacation

P. L. 1865, p. 799.

Judge may make orders thereon.

(a) A *certiorari* in a road case may be allowed in vacation, *Powell v Hitchener*, 3 Vr. 211. For cases before act of April 6, 1865, where application was made to a judge at chambers, and where applied for at bar, see *Ludlow v Ludlow*, 1 South. *357(a); also *Griscom v. Gilmore*, 3 Gr. 475, and *Ex parte Shough*, 1 Harr. 264.

(b) The court from which a *certiorari* issues, is to decide on its legality; the inferior court must obey it, *The State v. Hunt*, Coxe 287. A *certiorari* may issue although there may

be an appeal as in case of commissioners, etc., *Kingsland v. Gould*, 1 Hal. 161. *New Jersey R. R. Co. v. Snyder*, 2 Harr. 25; but not in cases in justices' courts, *post* JUSTICES' COURTS, § 96. A *mandamus* was issued to the common pleas where they had ordered proceedings on an appeal to be stayed until a *certiorari* should be decided, *Budd v. New Jersey R. R. Co.*, 2 Gr. 468. See *White v. McCall*, Coxe 93. *State v. Bidleman*, 1 Harr. 267.

Allowance of.
R. S. 983.

To be presented
in open court.

On indictments.
R. S. 983.

P. L. 1873, p. 165.

Amended.

Recognizance
required.

Condition of.

Recognizance,
where filed.

R. S. 984.

Proceedings in
supreme court
on certiorari.

P. L. 1873, p. 165.

Amended.

Recognizances
required in
other cases.

R. S. 984.

2. No writ of *certiorari* shall be granted to remove into the supreme court any indictment, judgment, order, process or other proceedings, unless it be signed by one of the justices of the supreme court, and for want thereof, such writ shall be absolutely void and of no effect.

3. Every writ of *certiorari* for the removal of any indictment, judgment, or order from any court of oyer and terminer, or court of general quarter sessions of the peace, shall be delivered to the same in open court.

4. The supreme court or any justice thereof may, in its or his discretion, at the instance of any person indicted, on application in term time or vacation, award a writ of *certiorari* to remove into said court any indictment before trial, from any court of oyer and terminer and general jail delivery, or court of general quarter sessions of the peace, upon the following and no other terms, that is to say: that the person indicted and prosecuting such *certiorari*, shall, before the allowance thereof, with two sufficient sureties, enter into recognizance to the state of New Jersey before the supreme court, or any justice thereof, in such sum as the said court or justice shall direct, with condition that the person so indicted and prosecuting the *certiorari* shall, at its return, appear and plead to the said indictment in the said supreme court, and, at his own costs and charges, (a) cause and procure the issue that shall be joined upon the said indictment or presentment, or any plea relating thereto, to be tried at the next circuit court to be held for the county wherein the said indictment was found, after such *certiorari* shall be returnable, if the said supreme court shall not appoint any other time for the trial thereof, and if any other time be so appointed, then at such other time; and shall not depart the said supreme court until discharged by the same, and shall pay costs, if convicted of the offence charged in the said indictment; and upon further condition, that, if the supreme court shall so order, the said person so indicted shall appear in the court from which such indictment was removed, at any term thereof which the supreme court shall order, and plead to the said indictment and abide the judgment of the court, and pay costs, if convicted of the offence charged in the said indictment. (b)

5. Every recognizance, taken by virtue of the preceding section, shall be delivered to the court to which the *certiorari* is directed, together with the said writ; and the recognizance so taken, shall be certified into the said supreme court, with the said *certiorari* and indictment, and there filed; and if such recognizance be not delivered, together with the *certiorari*, to the court as directed, then it shall be the duty of the said court to proceed to the trial of the said indictment in the same manner as if no such *certiorari* had been allowed or presented.

6. Upon the removal of any indictment into the supreme court, if the said court shall determine that the said indictment is not sufficient in law, the person or persons so indicted shall thereupon be discharged, and all further proceedings thereon cease; and in case the said court shall determine that the said indictment is sufficient in law, the said court may in its discretion retain the same in said court, to be carried down for trial before the proper circuit court, or may order that the same be returned by the clerk of the said supreme court to the court from which the same was removed, and the said court to which such indictment shall be remanded, shall in such case proceed thereon in the same manner as if the said writ had not been allowed.

7. No writ of *certiorari* shall be allowed to remove into the supreme court of this state any judgment or order, given or made by any justice or justices of the peace, or court of oyer and terminer, or of general quarter

(a) Where a defendant removes an indictment into the supreme court and carries it down to the circuit for trial, the attorney for the state cannot tax his costs as in a civil suit, but is entitled only to his regular fees as in criminal cases. *State v. Reed*, 3 Hal. 178.

(b) A *certiorari* can not be allowed until after appearance entered by defendant, *Sailer* ads. *The State*, 1 Harr. 357. An indictment against a corporation may be removed from the sessions, upon individuals entering into recognizance on behalf of the company, *The State v. The Morris Canal Co.*, 1 Gr. 192. A recognizance binds defendant, 1st To appear to answer; 2d To stand to and abide the judgment of the court; 3d Not to depart without leave of the court, until discharged, although no indictment should be found against him, or although he be tried and found not guilty

by a jury. *State v. Stout*, 6 Hal. 124. But where on a *scire facias* on his recognizance the defendant showed that he appeared at the sessions and was tried and acquitted, the recognizers were dismissed with costs, *State v. Saunders*, 3 Hal. 177. Relief may be granted by petition, on death of principal after forfeiture, *State v. McNeal*, 3 Harr. 333. S. C. 2 Harr. 191. Against several recognizers there may be one *scire facias*, one judgment and one execution, *The State v. Stout*, 6 Hal. 124, 362. The recognizance creates a lien on the land from the time of its acknowledgment, *State v. Stout*, 6 Hal. 362. *State v. Cruise*, 3 Vr. 318. After an acquittal the state cannot show that the return of the court below was untrue, *State v. Jones*, 6 Hal. 289. See *Newton v. Gloucester*, 1 Hal. 405.

sessions of the peace, unless the party prosecuting such *certiorari*, or some responsible person in his behalf, shall, before the allowance thereof, with two sufficient sureties, enter into recognizance to the state of New Jersey, before the supreme court, or before one of the justices of the said supreme court, in the sum of one hundred and fifty dollars, with condition that the party obtaining such *certiorari* shall prosecute the same to effect without delay, and shall perform such judgment or order as the said supreme court shall give or make thereon, with costs, if costs be awarded; and every recognizance taken by virtue of this section shall be delivered, together with the writ of *certiorari*, to the justice or justices, or court, to which such writ shall be directed, and be certified into the said supreme court, with the said *certiorari*, and the judgment or order removed thereby, and there filed; and if such recognizance be not so delivered with the *certiorari*, then it shall be the duty of the said justice or justices, or court, to proceed on such judgment or order in the same manner as if no *certiorari* had been allowed or presented; *provided always*, that this section shall not extend to orders or judgments in actions for debts or demands between party and party, made cognizable before any justice of the peace by the act entitled, "An act constituting courts for the trial of small causes."*(a)*

Condition of.

Where delivered and filed.

8. The court on the hearing of any *certiorari*, may in its discretion, give judgment for costs in favor of either party.

Allowance of costs.

P. L. 1871, p. 124.

9. In all cases of writs of *certiorari* brought to remove any tax or assessment or other order of proceeding, touching any local or public improvement, it shall be the duty of the court to determine disputed questions of fact as well as of law, and to inquire into the facts by deposition taken on notice, or in such other manner as is according to the practice of the court, and thereupon to reverse or affirm in the whole or part such tax, assessment, or other order or proceeding, according to the justice of the case.*(b)*

Court in certain cases may determine questions of fact.

P. L. 1871, p. 124.

May reverse or affirm in the whole or in part.

10. Whenever any assessment for the costs and expenses of laying out or opening any public road or street, or for paving or otherwise improving the same, or for the construction of any sewer or other local or public improvement, shall be set aside or reversed on *certiorari*, it shall be lawful in such case for the supreme court to appoint commissioners to make a new assessment of the costs and expenses thereof; which commissioners shall be the same in number, and shall possess the same qualifications as are required for commissioners in making such assessments by the statute under which the original assessment was made; and the commissioners so appointed, shall proceed to make a new assessment and report thereon upon the same principles and in the same manner as if they had been appointed under such statute; and their assessments, when made, shall be collected in the manner provided in such statute for collecting assessments for such improvements; *provided*, that the commissioners in making such new assessment, shall include therein the costs and expenses of such new assessment, together with the interest due on certificates of indebtedness or bonds (if any), which may have been issued on account of such improvement.

On reversal of assessment for public improvements the court may appoint commissioners to make a new assessment.

P. L. 1871, p. 123.

11. All judgments, orders and proceedings in the courts for the trial of small causes, and in the courts of common pleas upon appeals from said courts for the trial of small causes, and all judgments, orders and proceedings before justices of the peace and police justices under any statute or ordinance, may be removed into the circuit court of the same county by writs of *certiorari* and *supersedeas* thereon, allowed by any judge of such circuit court in the same manner and upon like terms as such writs are issuable out of the supreme court, and the bond given upon the allowance of such writs of *certiorari* shall be modified so as to conform to the provisions of this section, and be filed with the clerk of the said circuit court.*(c)*

Jurisdiction of circuit court.

R. S. 200.

Amended.

(a) A recognizance must be given in a bastardy case, *Teusbury* vs. *Sutton*, 3 *Vr.* 295. But not in a pauper case, *Bethlehem* v. *Alexandria*, 2 *Vr.* 366: nor in forcible entry and detainer, *Martin* v. *Hillyer*, 6 *Hal.* 22. *Delancy* v. *Lawrence*, 6 *Hal.* 25, 100.

(b) The supreme court will not determine disputed questions of fact arising in the justices' courts or common pleas,

Craft v. *Smith*, 6 *Vr.* 302. They will look into the facts on a *certiorari* to township officers proceeding under the act to remove encroachments on a highway, *State*, *Gulick* v. *Groendyke*, 9 *Vr.*

(c) The jurisdiction of the circuits is limited to suits originating in the justices' courts; they have no jurisdiction over matters of taxation, *State*, *Dufford* v. *DeCue*, 2 *Vr.* 302.

Limitation of
certiorari.

R. S. 929.

12. No writ of *certiorari* shall be allowed or issued on any judgment, order or proceeding that shall have been entered or obtained in any court of record of this state, or that shall hereafter be entered or obtained, unless the same be issued in eighteen months after the entering or obtaining the same. (a)

(a) Where a party applied for a *certiorari* at Nov. term, 1828, and had a rule to show cause on which the argument did not take place until May term, 1831, the writ then granted was considered as within the time. *Stevens v. Enders*, 1 Gr. 271. It may well be doubted whether the act

as to limitation of time is not so imperative that it must be submitted to even in case of fraud, *Chamberlin v. Barclay*, 1 Gr. 244. It may be issued to bring up an order of two justices in a pauper case after eighteen months, *Bethlehem v. Franklin*, 2 Dutch. 210. See *Carman v. Carman*. Pen. §633.

Cemeteries.

1. Formation of cemetery associations. Name. Trustees.
2. Certificate to be made, acknowledged and recorded in county clerk's office.
3. Upon recording certificate association deemed incorporated.
4. Association may hold land not exceeding seventy-five acres.
5. Annual election of trustees.
6. Trustees to make report annually. Proceedings when no election of trustees at regular time.
7. Association may hold property bequeathed or given upon trust.
8. Lands and property exempt from taxes and assessments and not liable to be sold on execution.
9. Burying grounds not liable to be sold on execution.
10. Lots designated on maps to be indivisible. Appropriation of proceeds of sales of lots.
11. After an interment a lot inalienable. Proviso.
12. Penalty for wilful destruction or defacement of tombs, fences, trees, &c.

P. L. 1848, p. 9.

" 1851, p. 254.

" 1853, p. 399.

" 1868, p. 832.

" 1873, p. 143.

An act to authorize the incorporation of rural cemetery associations and regulate cemeteries.

Revision—Approved April 9, 1875.

Formation of
cemetery associa-
tions.

P. L. 1851, p. 254.

Name.

Trustees.

1. Any number of persons residing in this state, not less than seven, who shall desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place for the burial of the dead, may meet at such time and place as they or a majority of them may agree, and appoint a chairman and secretary by the vote of a majority of the persons present at the meeting and proceed to form an association by determining on a corporate name by which the association shall be called and known, and the number of trustees to manage the concerns of the association, which number shall not be less than six nor more than twelve, and thereupon may proceed to elect by ballot the number of trustees so determined on; and the chairman and secretary shall immediately after such election divide the trustees by lot into three classes; those of the first class to hold their office one year; those in the second class two years; and those in the third class three years; but the trustees of each class may be re-elected if they shall possess the qualification hereinafter mentioned; the meeting shall also determine on what day in each year the future annual elections of trustees shall be held.

Certificate to be
made, acknowl-
edged and re-
corded in county
clerk's office.

2. The chairman and secretary of the meeting shall within three days after such meeting make a written certificate, and sign their names thereto, and acknowledge the same before an officer authorized to take the proof and acknowledgment of conveyances in the county where such meeting shall have been held, which certificate shall state the names of the associates who attended such meeting, the corporate name of the association determined upon by the majority of the persons who met, the number of trustees fixed on to manage the concerns of the association, the names of the trustees chosen at the meeting, and their classification, and the day fixed on for the annual election of trustees; which certificate it shall be the duty of the chairman and secretary of such meeting to cause to be recorded in the clerk's office in the county in which the meeting was held, in a book to be appropriated to the recording of certificates of incorporation.

3. Upon such certificate, duly acknowledged as aforesaid, being recorded,