

nor to cases where it shall be necessary for the party making or procuring such oath, affirmation or affidavit, to give notice to any person interested, of the taking of such oath, affidavit or affirmation.]

**Supplement.**

Approved March 18, 1885. P. L. 1885, p. 107.

**40. SEC. 1.** That all oaths, affirmations and affidavits to any application, petition, inventory, account or other proceeding in any orphans' court or before any surrogate required to be made or taken by any applicant, petitioner, assignee, executor, administrator, guardian, appraiser or any other person, may hereafter be made and taken before any master in chancery of this state, and any application, petition, inventory, account or other proceedings, so proved or verified, shall be deemed and taken to have been sufficiently proved or verified.

Oaths to proceedings before orphans' court or surrogate may be taken before a master in chancery.

**Supplement.**

Approved March 16, 1886. P. L. 1886, p. 84.

**41. SEC. 1.** That any affidavits or affirmations authorized by the laws of this state to be taken and subscribed before a justice of the peace of this state, which may have been or shall hereafter be taken and subscribed before a commissioner of deeds of this state, shall be deemed as valid and effectual in all civil causes, suits and proceedings, as if taken and subscribed before a justice of the peace. (a)

Commissioners of deeds authorized to take affidavits and affirmations.

**An act validating oaths taken before masters in chancery and notaries public in certain cases.**

Approved March 3, 1880. P. L. 1880, p. 101.

**42. SEC. 1.** That any official oath authorized by any law of this state, general, special or local, to be taken and subscribed before a justice of the peace of this state, which may have been taken and subscribed before a master in chancery or notary public of this state, shall be deemed as valid and effectual for all purposes as if taken and subscribed before a justice of the peace.

Certain official oaths validated.

**An act enabling township clerks to take affidavits in township business.**

Approved April 14, 1891. P. L. 1891, p. 415.

**43. SEC. 1.** That hereafter it may and shall be lawful for the township clerks of the several townships in this state to take affidavits in all cases concerning township business.

Township clerks may take affidavits.

(a) Query—What powers have commissioners of deeds under this act? See 8 N. J. L. J. 290, and 9 N. J. L. J. 132.

**Obligations and Joint Debtors.**

**I. OBLIGATIONS.**

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1. Scroll good seal for certain purposes.

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**II. JOINT DEBTORS.**

10. Upon dissolution of copartnership, any member may make separate compromise with creditors.
11. Debtor making compromise to take receipt, &c., from creditor.
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## I. Obligations.

## 1. SEAL.

R. S. 801.

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

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.

## An act concerning obligations.

Revision—Approved March 27, 1874.

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.

## 2. ACTIONS ON.

Joint debtors separately answerable.

R. S. 801, § 3.

How sued.

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.

2. That 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)

3. That 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. (b)

4. That 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. (c)

(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. *Ib.* 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. *Ib.* Where a *captus* 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. *McKelvey* ads. *Jones*, 2 Har. 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. *McMurtre v. Doughter*, 4 Zab. 252. See *Schuyler v. McCrea*, 1 Har. 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. *Ib.* 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. Where one of two joint debtors is served with summons and a copy of the declaration thereto annexed, and the other is returned not found, judgment cannot be entered by

default within sixty days from the return of the summons. *Stehr v. Olbermann*, 20 Vr. 633. Where the defendants are joint debtors, judgment cannot be entered against one alone. *Ib.* The act does not authorize a joint debtor served with process to appear to the suit in the name of the other defendants. *Davis v. Megroz*, 26 Vr. 427.

(b) 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. *Fowler 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. *Stohoff v. Dunham*, 4 Har. 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. Darling*, 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. *Hadden v. Van Ness*, Pen. \*84. Joint action lies not against the obligor and the executors of his co-obligor in a sealed bill. *Garretts v. Interest*, Pen. \*724. The third section, authorizing a suit against the representatives of a deceased joint obligor, applies to simple contracts as well as specialties. *Thompson v. Johnson*, 11 Vr. 220. A suit will lie against the administrator of a deceased maker of a promissory note, made jointly by two, during the life of the other maker. *Ib.* Where the remedy at law against the executors and devisees of a deceased surety on a bond is adequate, equity will, of course, not interfere; and even if there were no remedy at law, equity would not, in the absence of fraud, accident or mistake, give one against the representatives of a deceased surety. *Dixon v. Vandenberg*, 8 Steen. 47.

(c) Payment may be pleaded in bar of a judgment. *Gulick v. Lador*, 1 Gr. 68. But not in conjunction with *nul tuel record*. *Eiley v. Eiley*, Spen. 114.

5. That 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. (a)
6. That 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. (b)
7. That 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. (c)

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 costs.  
Ib., § 10.

## 3. BONDS WITH SPECIAL CONDITIONS.

8. That 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. (d)
9. That 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,

Assignment of breaches on bonds for non-performance of covenants.  
Ib., §§ 5, 6.  
P. L. 1855, p. 236, § 28.

On payment of damages assessed, execution stayed.  
R. S. 801, § 7.

(a) In an action at law upon a penal bond, with condition for the payment of money only, the plaintiff is entitled to recover the full amount of the penalty as a debt, and the excess of interest beyond the penalty in the shape of damages for the detention of the debt. *Long's Administrator v. Long*, 1 C. E. Gr. 59. *Gloucester City v. Eschbach*, 25 Vr. 150. See *Wilson's Case*, 11 Stev. 205.

(b) 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 installments, if the obligor fail to pay any installment when due, an action lies on the bond, and the defendant cannot plead that he paid a part of the installments after they became due, and that the remaining installments are not yet due. *Rosekrantz v. Durling*, 5 Dutch. 191. Where the condi-

tion 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.

(c) 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).

(d) 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, Sec. 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. Forns*, Pen. \*628. *People's Building Association v. Wroth*, 14 Vr. 70.

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, terre-tenants, 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. (a)

When discharge entered.

Plaintiff may have *scire facias* for future breaches.

[Assignment of bonds, see PRACTICE ACT, Secs. 19, 20 and 21. See title EVIDENCE, Sec. 72.]

## II. Joint debtors.

An act to authorize the compromise and discharge of claims against one or more of several joint debtors or copartners.

P. L. 1884, p. 298.

Approved May 9, 1884.

Upon dissolution of copartnership firm, any one or more members thereof may make separate compromise with creditors.

**10. SEC. 1.** That whenever any copartnership firm shall have been, or shall hereafter be, dissolved by mutual consent or otherwise, it shall and may be lawful for any one or more of the individuals who was or were embraced in said copartnership firm, to make a separate composition or compromise with any one or all of the creditors, of such copartnership firm; and such composition or compromise shall be a full and effectual discharge to the debtor or debtors making the same, and to them only, of and from all and every liability to the creditor or creditors with whom the same is made or incurred by reason of his or their connection with such copartnership firm.

Debtor making compromise to take from creditor a memorandum exonerating him from liability.

**11. SEC. 2.** That every such debtor or debtors, making such composition or compromise, shall take from the creditor or creditors with whom he may make the same, a note or memorandum, in writing, exonerating him or them from all and every individual liability incurred by reason of such connection with such copartnership firm, which note or memorandum may be given in evidence by such debtor or debtors under the general issue in bar of such creditors' right of recovery against him or them; and if such liability shall be by judgment in any court of record in this state, then, on producing to and filing with the clerk of such court the said note or memorandum, in writing, duly acknowledged, by the party or parties making the same, in the same manner as a satisfaction of judgment is now required by law to be acknowledged, such clerk shall discharge said judgment of record, so far as the said compromising debtor or debtors shall be concerned, and the ratable portion or portions of said debtor or debtors so released shall be credited as a payment or payments on account of said judgment.

How judgment discharged of record.

Compromise with member of firm not to discharge other copartners, &c.

**12. SEC. 3.** That such compromise or composition with an individual member or members of a firm shall not be so construed as to discharge the other copartners, nor shall it impair the right of the creditor to proceed at law or in equity against the members of such copartnership firm who have not been discharged for the balance of said partnership debt after the ratable portion or portions of said debtor or debtors so released shall have been deducted therefrom; and the member or members of such copartnership firm so proceeded against shall be permitted to set off any demand against said creditor or creditors which could have been set off had such suit been

(a) Where judgment has been obtained for the penalty of a bond for non-performance of covenants or agreements, and

execution is awarded on *scire facias* setting up further breaches costs will be taxed. *State v. Franke*, 22 Vr. 410.

brought against all the individuals composing such firm; nor shall such compromise or discharge of an individual of a firm prevent the other members of such firm from availing themselves of any defense at law or in equity that would have been available had this act not been passed, except that they shall not set up the discharge of one individual as a discharge of the other copartners, unless it shall appear that all were intended to be discharged, except as above provided.

**13. SEC. 4.** That such compromise or composition of an individual of a firm with a creditor of such firm, shall in no wise affect the right of the other copartners to call on the individual making such compromise for his ratable portion of such copartnership debt, the same as if this law had not been passed.

Rights of other copartners not affected by compromise.

**14. SEC. 5.** That the foregoing provisions in reference to copartners of a firm shall extend to joint debtors, who are hereby authorized individually to compound or compromise for their joint indebtedness with like effect in reference to creditors and to joint debtors of the individual so compromising as is herein provided in reference to copartners.

Provisions of act extended to joint debtors.

### Official Seals.

1. Where deposited,
2. What to be seals of,

3. Instruments sealed held valid.

#### An act relating to official seals.

Rev. 613.

Approved April 17, 1846.

R. S. 865.

1. That the seal of the prerogative court now in use, shall be continued to be used until otherwise provided, and shall be deposited in the office of the clerk of said court, in the custody of the said clerk; that the seal of the secretary of state now in use, shall be continued to be used until otherwise provided, and shall be deposited in the office of the secretary of state, in the custody of the said secretary; that the seal of the court of chancery now in use, shall be continued to be used until otherwise provided, and shall be deposited in the office of the clerk of the court of chancery, in the custody of the clerk of said court; that the seal of the supreme court of judicature of this state now in use, shall be continued to be used until otherwise provided, and shall be deposited in the office of the clerk of said court, in the custody of said clerk; that the seals of the clerks of the respective counties in this state now in use, shall be continued to be used until otherwise provided, and shall be deposited in the offices of the respective clerks, and in the custody of said clerks respectively; and that the seals of the surrogates of the respective counties in this state now in use, shall be continued to be used until otherwise provided, and shall be deposited in the offices of the surrogates of the respective counties, and in the custody of the said surrogates respectively.
2. That the seal of the secretary of state shall also be the seal of the court of impeachment, and of the court of errors and appeals; the seals of the clerks of the respective counties shall be also the seals of the circuit courts, the courts of common pleas, the courts of oyer and terminer and general jail delivery, and the courts of quarter sessions of the said counties respectively; and that the seals of the surrogates of the respective counties shall be also the seals of the orphans' courts of said counties respectively.
3. That all commissions, writs, process and other proceedings and instruments of writing, certificates and exemplifications, which require to be sealed by any of the aforesaid officers, or attested by the seal of any of the aforesaid courts, shall be held valid and effectual when sealed with the seal of such officers or such courts as aforesaid. (a)

Seal of prerogative court.

Secretary of state.

Chancery.

Supreme court.

County clerks.

Surrogates.

Impeachment and errors.

Circuit court, common pleas, oyer and terminer, &c.

Orphans' court.

Instruments so sealed held valid.

(a) Only such matters as may be legally included in the record can be made valid and effectual when attested by the seal of the supreme court. *Hunt v. Swayze*, 28 Vr. 33. The clerk of that court has no authority to certify, under the seal of

the court, the hour of the day when a judgment was entered. *Ib.* The exact time of entry may be proved as matter *dehors* the record. *Ib.*