

An act authorizing courts in this state to give the same force and effect to depositions taken stenographically by officers of such courts as if the same were signed by the witnesses.

Approved May 9, 1894. P. L. 1894, p. 264.

**395. SEC. 1.** That where testimony is taken before a supreme court commissioner, examiner in chancery or notary public for use in any of the courts of this state, it shall be lawful for said supreme court commissioner, examiner in chancery or notary public to take the said testimony stenographically, transcribe the same and return it to the court with a certificate stating that the same was correctly taken and transcribed, and on such certificate the court shall receive such transcript as a true statement of the evidence with the same force and effect as if the same had been written in longhand and signed by the witnesses.

Testimony taken before supreme court commissioners, &c., stenographically to have same force and effect as if written in longhand and signed by the witnesses.

An act to enable women to practice law.

Approved March 20, 1895. P. L. 1895, p. 366.

**396. SEC. 1.** That no person shall be denied admission to examination for license to practice law as an attorney or counselor in this state, or be refused recommendation to the governor for license to practice law as an attorney or counselor in this state, on account of sex.

Women may practice law.

An act in relation to the service of process in actions ex delicto upon residents of other states and upon non-resident receivers of foreign corporations.

Approved March 20, 1895. P. L. 1895, p. 380.

**397. SEC. 1.** That in all cases in which mesne process shall issue out of the supreme court or circuit court of this state in actions ex delicto against any person, persons, corporations or receivers of foreign corporations, who do not reside in this state but who own or control or have the custody of property, real or personal, situate in this state, and the cause of action arose in this state, and the plaintiff is a resident of this state, such process may be served upon the defendant or defendants therein named in the same manner as process may now be served on non-resident defendants in actions denominated local, the cause of which arose in this state; and the practice in all cases under this act shall be the same, as nearly as may be, as the practice provided for in the said local actions. [See Sec 376, ante.]

In actions ex delicto against non-residents, mesne process may be served upon the defendants in the same manner as upon non-resident defendants in local actions.

## Promissory Notes, &c.

### I. IN GENERAL.

1. When binding and transferable; action by indorsee.
2. Inland bills subject to same law as foreign bills.
3. Bills at sight, &c., entitled to grace if not drawn on bank.
4. Checks and drafts on banks payable without grace.
5. Bills in satisfaction of a debt, when to be accounted payment.
6. If bill lost, drawer to give another.
7. Actions at law on lost bills.

### II. PROTEST AND NOTICE OF DISHONOR.

- 8 Amended by section 17.
9. By whom protest to be made.
10. Oath of notary.
11. Notary or justice to keep record.
12. Record may be referred to in giving testimony.

13. Fees for protesting.
14. Legal holidays.
15. Notice of dishonor may be given on day next after a holiday.
16. Deposit in post-office, when a sufficient service of notice.

### III. SUPPLEMENTS.

17. Notaries appointed by governor.
18. Women may be appointed.
19. Fee must accompany application for appointment.
20. When term shall expire.
21. Repealer.

### IV. MISCELLANEOUS.

22. Days of grace abolished.
23. Repealer.

R. S. 798.

P. L. 1850, p. 194.  
 " 1854, p. 366.  
 " 1859, p. 81.  
 " 1860, p. 410.  
 " 1862, p. 194.  
 " 1871, p. 13.  
 " 1873, p. 107.

What promissory  
 notes good.

R. S. 798, § 4.

P. L. 1871, p. 13.

Transferable if  
 payable to order  
 or bearer.

Action by  
 indorsee.

Inland bills of  
 exchange to be  
 governed by  
 same law as  
 foreign bills.  
 R. S. 798, § 1.  
 Amended.

Bills, &c., pay-  
 able at sight, &c.,  
 when due.

P. L. 1862, p. 194.  
 " 1873, p. 107.

Checks and drafts  
 on banks pay-  
 able without  
 grace.

P. L. 1862, p. 194,  
 § 2.

Bills taken in  
 payment of debt  
 to be satisfaction  
 of such debt on  
 neglect to protest.  
 R. S. 798, § 3.

## I. In general.

### An act concerning promissory notes, bills of exchange, and notaries public.

Revision—Approved March 27, 1874.

**1.** That all notes in writing, heretofore or hereafter made and signed by any person or corporation, or by his, her or their agent thereunto lawfully authorized, whereby such person or corporation doth promise to pay to any other person or persons, or corporation, or order, or unto bearer, any sum of money mentioned in such note, shall, by virtue thereof, be construed to be due and payable to any such person or persons, or corporation, to whom the same is or shall be made payable; and every such note, payable to any person or persons, or corporation, or order, shall be assignable or indorsable over, in the same manner as inland bills of exchange are or may be; and the person or persons, or corporation, to whom such sum of money is or shall be, by such note, made payable may maintain an action for the same, in such manner as he, she or they might do upon any inland bill of exchange against the person or persons, or corporation, by whom, or in whose name the same was signed as aforesaid; and any person or persons, or corporation, to whom such note, that is payable to any person or persons, or corporation, or order, is or shall be indorsed or assigned, or the money therein mentioned ordered to be paid by indorsement thereon, may maintain his, her or their action for such sum of money, either against the person or persons, or corporation, by whom, or in whose name the same was signed as aforesaid, or against any of the persons who indorse the same; (a) and in such action, the plaintiff or plaintiffs shall recover his, her or their damages and costs of suit; and if such plaintiff or plaintiffs shall be non-suited, or a verdict be given against him, her or them, the defendant or defendants shall recover his, her or their costs against the plaintiff or plaintiffs; and such plaintiff or plaintiffs, or defendant or defendants, respectively recovering, may sue out execution for such damages and costs by writ of execution, as is usual in other cases.

**2.** That every bill of exchange, for the sum of eight dollars or upwards, drawn or to be drawn in, or dated or to be dated at or from any place in this state, upon any person or persons of or in any other place in this state, and payable at a future time, or at sight, or on demand, shall, in case of non-acceptance by the drawee, when presented for acceptance, or, if accepted, in case of non-payment by the drawee, when due and presented for payment, be protested in like manner as foreign bills of exchange, and shall in every respect, except where this act otherwise directs, be regulated and governed by the same law, custom and usage as regulate and govern foreign bills of exchange.

**3.** That all checks, bills of exchange or drafts, other than those upon banks or banking associations, which shall be drawn payable at sight, or at no fixed time or period, or on demand or on presentation, shall be due and payable at the expiration of three days' grace after the same shall be presented for acceptance.

**4.** That all checks, bills of exchange or drafts, appearing on their face to have been drawn upon any bank, or banking association, which are on their face payable at sight or on any specified day, or in any number of days after the date or sight thereof, shall be deemed due and payable on the day mentioned for the payment of the same, without any days of grace being allowed thereon.

**5.** That if any person accept any bill of exchange, for and in satisfaction of any former debt, or sum of money formerly due to him or her, the same shall be accounted a full and complete payment of such debt, if such person accepting such bill for his or her debt, doth not take due course to obtain payment thereof, by endeavoring to get the same accepted and paid, and make his protest thereof in case of non-acceptance and non-payment.

(a) See *New Jersey Banking Co. v. Myers* 7 Hal. 141 149.

6. That in case any bill of exchange shall happen to be lost or miscarried, before the time for payment thereof, the drawer of the said bill shall be obliged to give another bill of the same tenor with that first given, the person or persons to whom the same is and shall be so delivered, giving sufficient security, if demanded, to the said drawer, to indemnify him against all persons whatsoever, in case the said bill of exchange, so alleged to be lost or miscarried, shall be found again.

If bill lost, drawer to give another.  
R. S. 798, § 2.

7. That in an action upon any negotiable instrument which is lost, or upon any plea or notice of set-off founded on such instrument, the fact that such instrument was lost while negotiable, by delivery or otherwise, shall not prevent a recovery thereon, in a court of law; but any court of law shall give judgment in the same manner as if such note was not lost, and may take the same order thereon as a court of equity would, to indemnify the party charged against the repayment thereof. (a)

Action at law on lost bills, &c.  
P. L. 1859, p. 81.

Indemnity to be given.

II. Protest and notice of dishonor.

8. [Amended by Sec. 17, *post.*]

9. That the protest of bills of exchange and promissory notes may be made by a notary public; *provided*, that such protest shall, for want or in default of a notary public, be made by any justice of the peace, whose act, in such case, shall be of equal efficacy and virtue with that of a notary public. (b)

By whom protest to be made.  
Ib., § 1.

10. That every notary public in this state who may be hereafter commissioned, shall take and subscribe an oath or affirmation before the clerk of the county in which he resides, faithfully and honestly to discharge all the duties of his office, and that he will make and keep a true record of all such matters as are required by law; which oath or affirmation shall be filed with the said clerk; and the said clerk, for drawing, taking and filing such oath or affirmation, shall be entitled to the sum of fifty cents.

Oath of notary.  
Ib., § 10.

11. That it shall be the duty of every notary public or justice of the peace in this state, upon protesting any bill of exchange or promissory note, to record, in a book to be kept for that purpose, the time when, place where, and upon whom, demand of payment was made, with a copy of the notice of non-payment, how served, and the time when; or if sent, in what manner, and the time when; and if sent by post, to whom the same was directed, at what place, and when the same was put into such post-office, to which record they shall sign their names; and upon the death or removal out of the state, of such notary or justice, such record shall be deposited in the office of the clerk of the county in which he last resided; and it shall also be the duty of such notary public or justice of the peace to furnish to the person paying the costs and expenses of such protest, a certificate, under his hand and official seal, of the matters and things so required to be by him entered of record as aforesaid. (c)

Notary or justice to keep record.  
R. S. 798, §§ 7, 8.

What to contain.

In case of death or removal, to be deposited in clerk's office.

Certificate thereof to be given.  
P. L. 1862, p. 34, § 2.

12. That it shall be lawful for such notary public or justice of the peace, when called upon to give evidence in any court of this state, upon the subject of such protest, to refer to the record so by him kept as aforesaid, for his own satisfaction; and whenever any question shall arise in any court of this state, touching the protest of any promissory note or bill of exchange, if it shall be made to appear that the notary or justice by whom

Record may be referred to in giving testimony.  
R. S. 798, § 8.

(a) Equity, in relieving against the loss of a bond payable to bearer, makes no discrimination against loss by theft. *Force v. City of Elizabeth*, 12 C. E. Gr. 408. A court of equity is not ousted of any part of its original jurisdiction by the fact that a court of law exercises the same or a similar jurisdiction. *Ib.* If a lost instrument is found pending a suit to recover on it as a lost instrument, the suit will not thereby be defeated unless the instrument is restored to the complainant. *Force v. City of Elizabeth*, 1 *Steu.* 405.

(b) This provision was not intended to make the protest of inland bills of exchange and promissory notes, by a notary or justice of the peace, a condition precedent to the liability of the indorser. It was adopted with the view of supplying the means of proving demand and notice of dishonor in certain cases, by the certificate of the officer performing the service. *Burk v. Shreve*, 10 *W.* 216. See *ante*, title EVIDENCE, p. 1401, Sec. 20.

(c) The certificate of the notary, to be competent evidence of presentment and dishonor of a bill or note, under this section,

must state the facts as to the presentment and dishonor, and of the time and manner of giving or sending notice of dishonor. The court or jury, on the facts so certified, must decide whether the liability of the indorser has been fixed. *Burk v. Shreve*, 10 *W.* 214. The certificate of a notary that he "only gave notice to the indorsers of non-payment thereof," is not competent evidence as proof of notice to an indorser. *Ib.* If the certificate of the notary is defective in substance, in not stating sufficient facts, the indorser may object to its competency as evidence, though he has not given notice with his plea that he intends to dispute the fact of presentment or notice of dishonor. *Ib.* Notice of dishonor should describe the dishonored paper with such particularity as will apprise the person to whom it is given of the instrument in question. *Dodson v. Taylor*, 27 *W.* 11. As to notices of dishonor that will bind the heirs and devisees of an indorser. *Ib.* See *Burcatow v. Johnson*, 1 *Har.* 397.

In case of death or removal, record or transcript to be evidence.  
Ib., § 9.

Fees of notary or justice for protesting.  
Ib., § 7.  
P. L. 1850, p. 194.

Penalty for taking greater fees.

Certain days legal holidays with respect to bills and notes.  
P. L. 1854, p. 366.  
" 1860, p. 410.

In case of notes payable on certain holidays or on the day preceding.  
P. L. 1854, p. 366.  
" 1860, p. 410.

Notice of dishonor where drawer or indorser resides in city or town in which bill or note is payable.  
P. L. 1862, p. 194, § 3.

the same was made is dead, or has removed out of this state, or after diligent inquiry, his place of residence cannot be discovered, then the said record so deposited in the office of the clerk of the county, or a certified copy thereof, by the said clerk, under his seal of office, shall be received as competent evidence of the matters contained in said record.

13. That it shall be lawful for every notary public or justice of the peace for his whole services in making protest, and entering the same of record and giving a certificate, to take the following and no other fees, to wit: on every foreign bill of exchange, one dollar and seventy-five cents; and on every promissory note or inland bill of exchange for one hundred dollars or over, one dollar and fifty cents; and on every promissory note or inland bill of exchange for less than one hundred dollars, the sum of one dollar and thirty cents; and if any notary or justice shall charge any greater fees for the services mentioned than are herein allowed, he shall forfeit and pay to the party from whom he shall have taken the same, the sum of twenty-five dollars, to be recovered in an action of debt, with costs of suit, before any court of competent jurisdiction.

14. That with respect to the presentation, protest and notice of dishonor of bills of exchange and promissory notes, the following days shall be legal holidays, viz.: Christmas day, the first day of January, the twenty-second day of February, the fourth day of July, and any day appointed by the governor of this state for a day of solemn fast or for a day of thanksgiving; and bills of exchange and promissory notes becoming due on any such legal holidays shall be payable on the day next preceding such legal holiday, and in case of non-payment may be noted and protested on such preceding day. (1)

15. That in cases of bills of exchange and promissory notes becoming due and payable on any of the days mentioned in the last preceding section as legal holidays, or on the day preceding any such legal holiday, it shall not be necessary to give notice of the dishonor of such bills of exchange or promissory notes until the day next after such legal holiday; and whenever any such legal holiday shall happen or be appointed on a Monday, it shall not be necessary to give notice of dishonor of such bills of exchange or promissory notes as shall be payable on the preceding Saturday, until the Tuesday next after such legal holiday; and every such notice so given as aforesaid, shall be valid and effectual to all intents and purposes.

16. That whenever the residence or place of business of the indorser of a promissory note, or of the drawer or indorser of a check, draft, or bill of exchange, shall be in the city, town or township, or whenever the city, town or township indicated under the indorsement or signature of such indorser or drawer as his or her place of residence, or whenever, in the absence of such indication, the city, town or township where such indorser or drawer, from the best information obtained from diligent inquiry, is reputed to reside or have a place of business, shall be the same city, town or township where such promissory note, check, draft, or bill of exchange is payable or legally presented for payment or acceptance, all notices of non-payment and of non-acceptance of such promissory note, check, draft, or bill of exchange, may be served by depositing them, with the postage thereon prepaid, in the post-office of the city, town or township where such promissory note, check, draft, or bill of exchange, was payable or legally presented for payment or acceptance, directed to the indorser or drawer at such city, town or township.

[For act "concerning the records of notaries public of other states and territories," see title EVIDENCE, *ante*, p. 1401.]

#### Supplement.

P. L. 1894, p. 35.

Approved April 4, 1894.

17. SEC. 1. That section eight of the act to which this is a supplement, be amended so as to read as follows, viz.:

(1) See *ante*, p. 1941, title LEGAL HOLIDAYS.

[That the governor of this state for the time being may appoint and commission such and so many notaries public as to him shall seem necessary, who shall hold their respective offices for the term of five years, but shall be removed from office at the pleasure of the governor.]

Notaries appointed by governor.

18. SEC. 2. That the power of appointment hereby given the governor shall not be limited to the appointment of persons of the male sex, but such appointments may be of persons of either sex; and all words in said act, or any supplement thereto, referring to said notaries public as of the masculine gender, shall be understood to include, and shall be applied to females as well as males.

Women may be appointed.

19. SEC. 3. That every person applying for the appointment of notary public shall inclose with his or her application the sum of five dollars, which sum, if a commission shall be granted, shall be paid over by the governor to the treasurer, and if such commission shall not be granted, then the same shall be returned to the person making such application.

Fee must accompany application for appointment.

20. SEC. 4. That the term of office of every notary public appointed before the passage of this act shall expire July fourth, one thousand nine hundred.

When term shall expire.

21. SEC. 5. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

An act abolishing days of grace.

Approved February 12, 1895. P. L. 1895, p. 66.

22. SEC. 1. That on all notes, drafts, checks, acceptances, bills of exchange, bonds or other evidences of indebtedness made, drawn or accepted by any person or corporation after this act shall take effect, and in which there is no expressed stipulation to the contrary, no grace, according to the custom of merchants, shall be allowed, but the same shall be due and payable, as therein expressed, without grace.

Days of grace abolished.

23. SEC. 2. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Repealer.

Public Parks.

1. Amended by sections 4 and 13.
2. Municipalities may issue bonds for purchase of parks.
3. Repealer.
4. Amended by section 13.
5. Parks, how paid for.
6. Cities may purchase additional lands for parks.
7. Lands, how paid for.
8. Second-class cities may create park commissions.
9. Amended by section 12.
10. Park commission to expend "park fund."
11. Repealer.
12. Common council to levy tax for park purposes.
13. Common council, &c., may by ordinance purchase lands for park.
14. How lands paid for.
15. Repealer.
16. Cities may use certain city lands as public park.
17. May expend money for improvement of same.
18. May appoint keepers thereof and adopt rules, &c.
19. Cities may purchase unimproved meadow land for park purposes.
20. Bonds may be issued therefor.
21. Payment of bonds to be provided for by taxation.
22. Repealer.
23. Proceedings to condemn lands by cities for park purposes.
24. Proceedings in case of appeal.
25. Second-class cities may acquire lands beyond city limits for park purposes.
26. Such parks, how managed.
27. Such parks, how improved.
28. Such parks not taxable.
29. Repealer.
30. Towns and boroughs may acquire lands for public parks.
31. Resolution designating lands to be purchased to be submitted to voters. Provisions concerning election.
32. Governing body may issue bonds if election is in favor of the resolution.
33. Towns and boroughs may lease any part of the property.
34. Provisions for payment of bonds and appointment of sinking fund commissioners.
35. Park commissions to be appointed in second-class cities. Their qualifications and terms.
36. Commissioners to elect president annually.
37. Park commissioners to have entire control of parks.
38. May appoint and employ clerk, officers, &c., and fix their compensation.
39. Powers of present commissioners.
40. Certain lands laid out as parks by the legislature vacated.
41. Parks in towns, villages and townships may be enlarged.
42. Bonds or notes may be issued.
43. May purchase land at private sale.
44. Proceedings to condemn lands.
45. Proceedings in case of appeal.
46. Appointment of county park commissioners. Their terms, &c.
47. May employ assistants, &c.
48. Appointment of board of county park commissioners. Board may appoint officers, &c.
49. Board may locate parks, purchase lands, &c.
50. Proceedings before purchase or condemnation.