

LAWS

OF THE

STATE OF NEW-YORK,

PASSED AT THE FIRST MEETING

OF THE

SEVENTIETH SESSION,

OF THE

LEGISLATURE,

BEGUN AND HELD THE FIFTH DAY OF JANUARY, 1847,
AT THE CITY OF ALBANY.



VOL. I. + 2

ALBANY:

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1847.

CHAP. 279.

AN ACT to authorize the settlement of the accounts of the bail of Sanford A. Hooper, late superintendent on the Genesee Valley canal.

Passed May 12, 1847.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

§ 1. The comptroller and attorney-general are hereby authorized to ascertain and adjust, as near as may be practicable, the balance due from Campbell Harris and James B. Harris as bail for the faithful performance by Sanford A. Hooper, late superintendent on the Genesee Valley canal, of his duties as such superintendent, and to release and discharge such bail on receiving from them such sum as shall be found equitably due the state on such adjustment and the necessary expenses incurred in the execution of this act.

§ 2. This act shall take effect immediately.

CHAP. 280.

AN ACT in relation to the judiciary.

Passed May 12, 1847.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

ARTICLE FIRST.

Of the court for the trial of impeachments.

§ 1. The court for the trial of impeachments shall be a court of record, and when summoned shall be held at the capitol in the city of Albany, and the clerk and officers of the senate shall be the clerk and officers of said court, and the president of the senate shall preside therein, and in his absence the chief judge of the court of appeals shall preside, and in the absence of the president of the senate and said chief judge, such other member shall preside as the court shall elect.

§ 2. A suitable seal for said court shall be procured and kept in the custody of the clerk of the senate, and a description thereof shall be deposited and recorded in the office of the secretary of state, which description shall there remain of record.

§ 3. All laws relating to the court for the trial of impeachments, the jurisdiction, powers and duties thereof, the

Settlement
how to be
made.

A court of
record.
Terms
where held.

Seal of the
court.

What laws
applicable to
the court or-

ganized by
this act.

proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the court for the trial of impeachments organized by this act, the jurisdiction, powers and duties thereof, the proceedings therein, and the officers thereof, and their powers and duties, so far as the same can be so applied and are consistent with the constitution and the provisions of this act.

ARTICLE SECOND.

Of the court of appeals.

Judges of the
court how
classified.

Certificate to
be filed and
recorded.

Classes how
numbered.

Chief judge.

What jus-
tices of sup-
court to be
judges of.

§ 4. The judges of the court of appeals elected by the electors of the state, who shall be first elected, shall be classified by lot to be drawn by the secretary of state, or in his absence by the comptroller, in the presence of the comptroller, attorney-general, treasurer and surveyor-general, or a majority of them, at the office of the secretary of state, immediately after the completion of the canvass of the votes given at the first election of such judges. A certificate of said drawing and classification shall be signed by the secretary of state, comptroller, attorney-general, treasurer and surveyor-general, or a majority of them, and filed and recorded in the office of the secretary of state. The classes shall be numbered one, two, three and four, according to the time of service of each; the class having the shortest time to serve being number one, and the term of office of the judge so drawn in class number one, shall end on the thirty-first day of December, one thousand eight hundred and forty-nine; in class number two, on the thirty-first day of December, one thousand eight hundred and fifty-one; in class number three, on the thirty-first day of December, one thousand eight hundred and fifty-three; and in class number four, on the thirty-first day of December, one thousand eight hundred and fifty-five.

§ 5. The judge of the court of appeals elected by the electors of the state, who shall have the shortest time to serve, shall be the chief judge of said court.

§ 6. Four justices of the supreme court to be judges of the court of appeals, shall every year be selected from the class of said justices having the shortest time to serve; and alternately, first, from the first, third, fifth, and seventh judicial districts, and then from the second, fourth, sixth and eighth judicial districts; and shall enter upon their duties as judges of the court of appeals on the first day of January, and serve as judges of said court one year, except that those first selected shall enter upon their duties on the first Monday of July next, and continue in office until and including the last day of December, one thousand eight hundred and forty-

eight. Six judges of the court of appeals shall be necessary to constitute a quorum for holding any term of said court.

§ 7. No writ of error, appeal, or other process or proceeding, shall be abated by reason of such court not being held at any time appointed for that purpose. No writ, &c. to abate.

§ 8. The court shall have full power to correct and redress all errors that have happened or may happen, in the present supreme court and court of chancery, and that may happen in the supreme court organized by this act; and all laws relating to the court for the correction of errors, the jurisdiction, powers and duties thereof, the proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the court of appeals organized by this act; the jurisdiction, powers and duties thereof, the proceedings therein, and the officers thereof and their powers and duties, so far as the same can be so applied, and are consistent with the constitution, and the provisions of this act. Errors in chancery and sup. courts.

§ 9. There shall be at least four terms of the court of appeals held in each year, at such times and places as the said court shall appoint; the said terms may be continued and held from the commencement thereof, so long as the court shall deem it necessary; but the said terms shall be held at some place, now provided by law for holding courts, and they shall be so arranged that there shall be a term of the court once in two years in each of the judicial districts of the state. At every term, the causes originating in the judicial district in which such term is held shall have a preference on the calender. Every cause argued in such court shall be decided within the year in which it is argued, and before the close of the term next after that during which it shall be argued, unless the court shall order a re-argument. Terms and where held.

§ 10. The court shall examine all errors that shall be assigned or found in any record brought from the present supreme court, or in any process or proceeding touching the same, or in any record of the supreme court, organized by this act; and shall reverse or affirm any such judgment, or give such other judgment as the law may require; and the transcript of such record, with the judgment of the court of appeals therein, shall be remitted to the supreme court organized by this act, where such further proceedings may be had as shall be necessary to carry such judgment into effect; and the court of appeals shall have power to reverse, affirm, or alter, any order or decree of the present court of chancery, or of the supreme court organized by this act in equity cases, and make such other order or decree therein as justice shall require; and after the same is so heard and determined, all the proceedings, together with the judgment, decree or order of the court of appeals therein, and all things concern- Powers, &c., respecting sup. courts. Remitting record. Remitting decrees, &c.

ing the same, shall be remitted to the supreme court, and such further proceedings had in that court, as may be necessary to carry such judgment, decree or order into effect ; and such proceedings shall be remitted to the office of the county clerk with whom the record was filed, or by whom said order was entered, or decree enrolled, and if said judgment was rendered, or said order or decree entered or enrolled in the present supreme court or court of chancery, then to such county clerk as the court of appeals shall direct.

Writs of error how brought.

§ 11. Writs of error issuing out of the court of appeals to remove judgments from the present supreme court, and the supreme court organized by this act, may be brought in the same manner, within the time, with like effect, and upon the same terms as writs of error have been heretofore brought to remove judgments in the supreme court to the court for the correction of errors ; and said writs of error in criminal and civil cases, may be allowed and all necessary orders thereon made by a judge of the court of appeals, a justice of the supreme court, or by a county judge. And appeals may be brought from the orders and decrees of the present court of chancery, and of the supreme court organized by this act in equity cases, in the same manner, on the same terms, within the time, and with like effect as appeals from the orders and decrees of the court of chancery to the court for the correction of errors have heretofore been allowed and brought ; and when the approval of any bond, or any order is required on such appeal, the same may be approved and made by any judge or justice hereby authorized to allow writs of error. And all laws relating to writs of error and appeals to remove causes at law and in equity to the court for the correction of errors, shall apply to the removal of causes to the court of appeals so far as the same are applicable and consistent with the constitution and the provisions of this act.

Appeals how brought.

Certain proceedings pending in, &c., transferred to court of appeals.

§ 12. All writs of error duly brought to remove any judgment of the present supreme court into the court for the correction of errors, and all appeals from any order or decree of the present court of chancery to the court for the correction of errors, which shall not have been dismissed, and shall remain undecided on the first Monday of July next : and all business pending in said court for the correction of errors, shall be on the day last aforesaid transferred to and vested in the court of appeals ; and said court of appeals shall on and after that day have jurisdiction thereof ; and all recognizances and bonds, or other security, shall remain as valid and effectual as they were in said court for the correction of errors, and would have been, had said court for the correction of errors continued ; and all recognizances, bonds, or other security, shall be subject to the order, decree or judgment of

the said court of appeals, as the same would have been to that of the court for the correction of errors, if that court had continued, and with like effect.

§ 13. A term of the court of appeals shall be held on the first Monday in July next, at the capitol in the city of Albany. Term of the court.

ARTICLE THIRD.

Of the supreme and circuit courts.

§ 14. The justices of the supreme court elected at the first election thereof, shall be classified by lot, to be publicly drawn by the secretary of state, and in his absence by the comptroller, in the presence of the comptroller, attorney-general, treasurer, and surveyor-general, or a majority of them, at the office of the secretary of state, immediately after the completion of the canvass of the votes given at the first election of such justices; and a certificate of said drawing and classification shall be signed by the secretary of state, comptroller, attorney-general, treasurer, and surveyor-general, or a majority of them, and filed and recorded in the office of the secretary of state. The classes shall be numbered one, two three and four, according to the time of service of each; the class having the shortest time to serve, being number one, and the term of office of those so drawn in class number one, shall end on the thirty-first day of December, one thousand eight hundred and forty-nine; in class number two, on the thirty-first day of December, one thousand eight hundred and fifty-one; in class number three, on the thirty-first day of December, one thousand eight hundred and fifty-three; and in class number four, on the thirty-first day of December, one thousand eight hundred and fifty-five. Justices of sup. court, when and how classified.

§ 15. The justice of the supreme court in each judicial district, having the shortest time to serve, and who is not a judge of the court of appeals, nor appointed or elected to fill a vacancy in the first class, shall be a presiding justice in the supreme court. Presiding justice.

§ 16. The supreme court organized by this act, shall possess the same powers, and exercise the same jurisdiction as is now possessed and exercised by the present supreme court and court of chancery; and the justices of said court shall possess the powers, and exercise the jurisdiction now possessed and exercised by the justices of the present supreme court, chancellor, vice-chancellors, and circuit judges, so far as the powers and jurisdiction of said courts and officers shall be consistent with the constitution and provisions of this act. And all laws relating to the present supreme court and court of chancery, or any court held by any vice-chancellor, and Its powers and jurisdiction. Powers of justices.

the jurisdiction, powers and duties of said courts, the proceedings therein and the officers thereof, their powers and duties, shall be applicable to the supreme court organized by this act, the powers and duties thereof, the proceedings therein, and the officers thereof, their powers and duties, so far as the same can be so applied and are consistent with the constitution, and the provisions of this act.

Writs of error to common pleas or county courts.

§ 17. Writs of error may be brought to review judgments of the present courts of common pleas, or of the county courts, in all cases in which such writs of error may now be brought to remove judgments from the courts of common pleas to the present supreme court; and writs of error and certiorari may be brought to remove judgments, and suits and proceedings, from any court of oyer and terminer, and from the present courts of general sessions of the peace, and courts of sessions, in all cases where such writs may now be brought to remove judgments and suits and proceedings from the courts of oyer and terminer, and from courts of general sessions of the peace; and appeals may be brought from the decisions, decrees or orders of the county judge, acting as surrogate, or other officer acting as such, in all cases where appeals may now be brought from surrogates to the chancellor or circuit judge; and appeals may be brought from the decisions, decrees or orders in equity, of the county court or county judge, in all cases in which appeals may be now brought from the decisions, decrees or orders of a circuit judge or vice-chancellor to the chancellor; and said writs of error, and writs of certiorari shall issue from and be returnable to, and appeals hereby authorized, shall be brought to the supreme court organized by this act. And when the allowance of any appeal, writ of error, or writ of certiorari, or approval of any bond or surety, or taking any recognizance or justification of any bail or surety, shall be necessary to remove any judgment, order, or decree, or suit or proceeding, to the said supreme court, the same may be allowed, approved or taken by any judge of the court of appeals, justice of the supreme court, county judge or local officer elected to discharge the duties of county judge and surrogate. And all laws respecting appeals, writs of error and writs of certiorari, the time, manner and effect of bringing the same, and the security to be given, and staying proceedings thereon shall be deemed to apply in such cases, so far as the same are applicable, and consistent with the constitution and the provisions of this act.

Appeals from county courts and surrogates.

Appeals &c., by whom allowed.

Certain appeals brought to sup. court.

§ 18. Appeals from any order or decree, made by any vice-chancellor or assistant vice-chancellor, before the first Monday of July next, may be brought to the supreme court organized by this act, in the same manner and within the time,

and on the same terms, and with like effect as is now allowed from said orders and decrees to the chancellor.

§ 19. There shall be a general term of the supreme court held in every county in this state, having a population exceeding forty thousand, at least once in each year, and as much oftener as the business of the county shall require; and in every other county, except Hamilton, as often as once in two years, and as much oftener as the business of the county shall require; and said terms in said last mentioned counties, shall be so arranged that at least one term shall be held in each county, or in a county adjoining, in every year. The supreme court, at the term thereof to be held, pursuant to the twenty-fourth section of this act, shall appoint the times and places of holding the general and special terms thereof, and the terms of the circuit courts and courts of oyer and terminer; and may at any other general term, provide for holding terms in cases when any such terms shall not have been held, as appointed by an order entered with the clerk of the county in which the alteration is made, two months before said change takes effect; and said clerk shall immediately cause said order to be published four weeks successively in a newspaper printed in said county, and also in the newspaper printed at Albany, in which legal notices are required to be inserted, the expense of which publication shall be a county charge; and all writs, process, bonds, recognizances, and other proceedings, shall be returnable, heard, tried and determined accordingly, and shall not be otherwise affected by such appointments. The places so appointed for holding said courts, shall be at the court houses or places in the respective counties provided by law for holding county or circuit courts. Any circuit court may be continued by adjournment to such time as the justice holding such circuit, shall, by a rule to be entered in its minutes, direct; and such adjourned circuit, may be held and continued by further adjournment, as often as the justice holding such court shall deem necessary, and causes may be noticed for trial, and tried at any such adjourned circuit, in like manner and with the same effect as at a stated circuit.

§ 20. There shall in each year, be at least two special terms of said court held in each county, except Hamilton, and as many more as the public business shall require, to hear and determine non-enumerated business in suits and proceedings at law, and to take testimony, and hear and determine suits and proceedings in equity; and orders in suits and proceedings at law, and orders and decrees in suits and proceedings in equity, may be made at such special terms; and all suits and proceedings in equity in said supreme court, shall be first heard and determined at a special term of said court unless

General
terms of sup.
court when
held.

Notice there-
of to be giv-
en and pub-
lished.

Adjourned
circuit
courts.

Special
terms of sup.
court.

Orders may
be made.

the justice holding such special term shall direct the same to be heard at a general term. In case any suit or proceeding in equity, shall be heard and determined at a special term either party may apply at a general term of said court for a re-hearing; and every justice, at the time and place of holding a circuit court, may hold a special term of the supreme court. But no special term, held at the time and place of holding any circuit court as aforesaid, shall be deemed one of the two special terms of said court, required to be held as directed by the first part of this section.

Re-hearings.

Circuit courts to be held.

§ 21. There shall in each year, be held at least two circuit courts in each of the counties in this state, except Hamilton, and in the city and county of New-York, there shall be at least four of said courts in each year. And jurors shall be drawn and summoned therefor, and attend said courts, as now required for circuit courts.

Powers and jurisdiction of circuit courts.

§ 22. Circuit courts shall possess the same powers, and exercise the same jurisdiction now possessed and exercised by the circuit courts of this state, so far as the powers and jurisdiction of said courts shall be consistent with the constitution and the provisions of this act. And all laws relating to the present circuit courts, and the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof and their powers and duties, shall be applicable to the circuit courts organized by this act, their powers and duties, the proceedings therein, and the officers thereof, and their powers and duties, so far as the same can be so applied and are consistent with the constitution and the provisions of this act.

Justices of the sup. court to be employed in holding general and special terms, &c.

§ 23. Each of the justices of the supreme court, shall during his term of office, be employed in holding the general and special terms of the supreme court, the circuit courts and courts of oyer and terminer, in each of the several judicial districts, in proportion as nearly equal as may be, to the business of such courts in such districts respectively, or shall be so employed in at least as many of such districts as he shall have years to serve from the commencement of his term; and the duties of such justices shall be so assigned, that each justice shall hold an equal proportion, as near as may be, of the general and special terms of the supreme and circuit courts and courts of oyer and terminer. But nothing in this section contained, shall prevent any justice from supplying the place for the time being, of any justice who may be sick or absent, or whose office may be vacant; and it shall be the duty of any justice not engaged in holding any other term of said courts, to supply the place of any justice as aforesaid.

A general term of sup. court to be

§ 24. A general term of the supreme court organized by this act, shall be held at the capitol in the city of Albany,

and commence on the first Monday of July next; and said court shall at said term, if a majority of all the justices of the court be present by an order to be entered by the clerk of the court of appeals, acting as clerk of the supreme court, arrange and appoint the general and special terms of said court, and the terms of all the circuit courts and courts of oyer and terminer, and assign the business and duties to the justices thereof respectively, and establish, revise, and alter the rules of said court; which order shall be published in the newspaper printed at Albany in which legal notices are required to be published, six weeks successively. And a like term of said court shall be held at the same place, and commence on the second day of January, one thousand eight hundred and fifty, and on the second day of January every second year thereafter, at each of which terms a like order shall be entered and published as aforesaid. If the second day of January aforesaid shall happen on Sunday, said term shall commence on the succeeding day.

held at capitol, &c.

General and special terms &c., then to be appointed.

Order to be published and mode of publication.

§ 25. Justices of the peace, and judges and justices of inferior courts not of record, and their clerks, may be removed as provided by the constitution, by the supreme court at any general term thereof.

Supreme court at a general term may remove justices, &c.

ARTICLE FOURTH.

Of county and surrogates' courts, and powers of the county judge.

§ 26. As many terms of the county court in each county, except the city and county of New-York, shall be held at the court house in such county or other usual place of now holding courts of common pleas or circuit courts, and at such times as the county judge shall by order appoint, which order shall be published in a newspaper printed in the county, once a week, for three weeks successively. The county judge may change the day appointed for holding said terms by an order made and entered two months before said change takes effect, and immediately published as hereinbefore provided, and the expense of said publication shall be a county charge.

Terms of courts.

§ 27. The county judge in each county shall designate as many of said terms in each year for the trial of issues of fact by a jury as there are now terms of the court of common pleas in such county fixed by law, which terms shall be designated in the order published as aforesaid, and shall be terms for the trial of issues of fact by a jury, and jurors shall be drawn and summoned therefor and attend the same, as now required for courts of common pleas. The terms so designated, shall be held at the places where the courts of

County judges may designate.

common pleas or circuit court are now by law required to be held.

No writ, &c.,
to abate.

§ 28. Whenever the county court or court of sessions, or any surrogate's court appointed to be held in any county shall fail, no writ, process, recognizance or other proceeding returnable at, or to be heard or tried in said court, shall be abated, discontinued or rendered void thereby.

Jurisdiction
of county
courts.

§ 29. County courts shall have power and jurisdiction to hear, try and determine, all matters and proceedings specially conferred by statute upon, and heretofore triable and cognizable by courts of common pleas of the several counties; and county judges in their respective counties shall have power to perform all the duties, and do all the acts now required to be done and performed by the judges of the county courts when not holding county courts, or any one or more of them, at chambers or otherwise, so far as those acts and duties are consistent with the constitution and the provisions of this act. But nothing in this section contained, shall be deemed to confer original jurisdiction upon any county court, in any action known to the common law.

Powers of
same.

§ 30. The county court in each county shall have power to hear, try and determine according to law, suits and proceedings by scire facias to revive any judgment in said court, or that shall have been rendered in the present court of common pleas of said county, or to have execution of said judgments, or to revive any suit in said county court; also of suits and proceedings for the admeasurement of dower, or for the partition of lands, when the lands are situated in the county where the court is held; also to hear, try and determine according to law the following actions, when all of the defendants at the time of commencing the action, reside in the county in which said court is held: actions of debt, assumpsit and covenant, when the debt or damages claimed shall not exceed two thousand dollars; actions for assault and battery and false imprisonment, when the damages claimed do not exceed five hundred dollars; actions of trespass and trespass on the case for injuries to real or personal property when the damages claimed shall not exceed five hundred dollars; actions of replevin when the value of the property claimed does not exceed one thousand dollars; and also to grant new trials in all such actions, suits or proceedings.

Equity juris-
diction.

§ 31. The said county court shall have equity jurisdiction in suits and proceeding in the following cases:

1. For the foreclosure of mortgages when the mortgaged premises are situated in such county;
2. For the sale of the real estate of infants, when the real estate is situated, and the infants reside in such county;

3. For the care and custody of lunatics and habitual drunkards, residing in such county ;

4. For the satisfaction of judgments and decrees on which there shall remain due a sum exceeding seventy-five dollars out of the property of a debtor, when an execution has been returned unsatisfied, and said debtor resides in such county ;

5. For partition of lands in such county ;

6. For the admeasurement of dower in lands in such county.

§ 32. Surrogates' courts, in counties in which the county judge performs the duties of the office of surrogate, may be held at the time and place at which county courts shall be held, and the order of business of the county court, court of sessions and surrogates' court, shall be under the direction of the county judge ; and he shall perform the duties of the office of surrogate at such other times and places within his county, as the public interests shall require. Surrogates courts when and where held.

§ 33. In counties, in which the duties of the office of surrogate are performed by a separate officer elected to perform the duties of the office of surrogate, surrogates' courts shall be held at the times and places and in the manner and with the same powers and jurisdiction as now provided by law.

§ 34. A justice of the supreme court, or a county judge, Injunctions. may allow injunctions in such cases and under such rules and regulations as the supreme court may prescribe.

§ 35. The county court in each county, shall possess the same powers and exercise the same jurisdiction in all cases of appeals from judgments rendered by a justice of the peace, and of writs of certiorari to remove any such judgment ; and over any judgment rendered by a justice of the peace whereof a transcript shall have been filed with the clerk of the county in which said county court is held, and of scire facias to have execution of, or revive the same, and over any execution issued by said clerk ; whether said transcript shall have been filed before or after the first Monday of July next, as courts of common pleas now have and exercise. And appeals from, and writs of certiorari to remove any judgment rendered by any justice of the peace, may be brought and allowed, in the same manner and with like effect, and within the same time, to said county court, as the same are now brought and allowed to courts of common pleas ; and may be allowed, and the bond approved by any judge of the supreme court, county judge or local officer elected to discharge the duties of county judge and surrogate. And all proceedings pending in any court of common pleas, on the first Monday of July next, in suits originally commenced in justices' courts, shall be, on that day, transferred to, and vested in the county court of the same county, and said coun- Jurisdiction in cases of appeal, certiorari and scire facias.

ty court on and after that day, shall possess the same powers and exercise the same jurisdiction therein, as courts of common pleas now possess.

Further powers, &c., of county courts.

§ 36. County courts shall possess the same powers, and exercise the same jurisdiction in all matters, suits and proceedings at law and in equity, of which they may take cognizance, as are now possessed and exercised by the courts of common pleas of the same county, or the court of chancery, so far as shall be consistent with the constitution and the provisions of this act; and all laws relating to the present courts of common pleas and courts of chancery, the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof and their powers and duties, shall be applicable to the county courts of the respective counties, their powers and duties, the proceedings therein, and the officers thereof and their powers and duties, so far as the same can be so applied, and are consistent with the constitution, and the provisions of this act.

Powers and duties of county judge and surrogate.

§ 37. The county judge or other officer elected to perform the duties of the office of surrogate, and the local officers elected to discharge the duties of county judge and surrogate, when acting as surrogate, shall possess the same powers and perform all the duties, and exercise the same jurisdiction, as are now possessed, performed and exercised by the surrogates of their respective counties, so far as shall be consistent with the constitution, and the provisions of this act. And all laws relating to the jurisdiction, powers and duties of surrogates, and surrogates' courts and their proceedings, shall be applicable to said judge or other officer, while performing the duties of the office of surrogate, so far as the same can be so applied, and are consistent with the constitution, and the provisions of this act.

ARTICLE FIFTH.

Of criminal courts.

Courts of oyer and terminer, when and by whom held.

§ 38. Courts of oyer and terminer of the respective counties, except in the city and county of New-York, shall be composed of a justice of the supreme court, who shall preside, and the county judge and the justices of the peace, designated as members of the court of sessions; and the presiding justice, and any two of the other officers above mentioned, shall have power to hold said courts. And said courts shall be held at the same times and places that circuit courts of the same county shall be appointed to be held.

In New-York.

§ 39. The courts of oyer and terminer of the county of New-York, shall be composed of a justice of the supreme court, who shall preside, and any two of the following offi-

cers : the judges of the court of common pleas of said city and county, the mayor, recorder and aldermen of said city. Said courts shall be held at the same time and place that circuit courts for that county shall be held.

§ 40. At the first election for county judge, and at every general election, after the year one thousand eight hundred and forty-seven, two justices of the peace in each county, except the city and county of New-York, shall be designated to hold courts of sessions in their respective counties as follows : each elector may designate or place upon a ballot, under the words, "for sessions," the name of one justice of the peace in the county, having at least two years from the first day of January next after said election to serve, and the two justices of the peace having the greatest number of said votes, shall be deemed designated as members of the court of sessions of that county ; those so designated at the first election, until and including the last day of December, one thousand eight hundred and forty-nine ; and those so designated after the present year, for two years commencing on the first day of January next after said designation ; and at said first election, such justices shall be voted for on the same ballot with the county judge, and thereafter if any county officer shall be then voted for, upon the same ballot with the county officers. And if said justices, or either of them, shall be absent at any term of oyer and terminer, or at any term of said court of sessions, or the office of any such justice shall become vacant, the county judge may, at any such term of the court, supply any vacancy or deficiency during that term, by selecting any justice of the peace of the county, for that purpose.

§ 41. All indictments and proceedings pending in the courts of general sessions of the peace, on the first Monday of July next, shall be transferred on that day to and vested in the courts of sessions of the counties in which the same shall be pending respectively, except in the city and county of New-York, and except indictments for crimes which the said courts of general sessions of the peace now have no jurisdiction to try. No indictment, writ, process, notice, recognizance or other proceeding returnable to, or to be heard, tried, or considered in or pending in any court of oyer and terminer or in any general sessions of the peace, on that day shall be abated, discontinued or rendered void by the transfer thereof to any court of oyer and terminer or of the sessions, but the same shall be continued to the first term of the court of oyer and terminer or court of sessions, as the case may be, in the proper county.

§ 42. Courts of sessions, except in the city and county of New-York, shall be held at the time and place at which

Justices "for sessions" how and when designated.

Indictments pending, &c., transferred.

No indictment to abate.

Courts of sessions in New-York.

county courts for the trial of issues of fact by a jury of the same county shall be held, and the same number of grand and petit jurors shall be drawn and summoned therefor, and attend the same as is now required for courts of general sessions of the peace, in the same county.

Powers and jurisdiction of courts of oyer and terminer.

§ 43. Courts of oyer and terminer shall possess the same powers, and exercise the same jurisdiction as are now possessed and exercised by the present courts of oyer and terminer of this state, so far as the same shall be consistent with the constitution and the provisions of this act. And all laws relating to the present courts of oyer and terminer, and the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the courts of oyer and terminer organized by this act, their powers and duties, the proceedings therein, and the officers thereof, and their powers and duties, so far as the same can be so applied, and are consistent with the constitution and the provisions of this act.

Power and jurisdiction of courts of sessions in counties.

§ 44. The courts of sessions of their respective counties organized by this act, shall possess the same powers, and exercise the same jurisdiction in their respective counties, as are now possessed and exercised by the courts of general sessions of the peace, so far as the same are consistent with the constitution and the provisions of this act. And all laws relating to the present courts of general sessions of the peace, the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the courts of sessions organized by this act, their powers and duties, the proceedings therein, the officers thereof, their powers and duties, so far as the same can be so applied and are consistent with the constitution and the provisions of this act.

ARTICLE SIXTH.

Miscellaneous provisions.

Trials of issues of fact.

Local actions.

§ 45. Issues of fact which shall be joined in any surrogate's court to be tried by a jury, shall be tried in the county court of the county in which said surrogate's court is held; and issues of fact which shall be joined in actions for the recovery of any real estate, or for the recovery of the possession of any real estate, or in actions for injuries to real estate, including actions of waste and of nuisance, or in proceedings for the admeasurement of dower, or for the partition of lands, or for the determination of claims to real property, shall be tried in the county where the subject of the action shall be situated; and issues of fact joined in any of

the aforesaid actions upon counts in the same declaration for any other cause of action, shall be tried in the same county.

§ 46. All other issues of fact joined in any action shall be tried in the county in which the parties, or some of them, shall reside where the suit shall be commenced, or in an adjoining county; and if none of the plaintiffs shall reside in this state, then the same shall be tried in the county where the venue shall be laid. If the venue in any cause be not laid, as required in this section, the suit shall not abate, nor the proceedings therein be set aside, nor the plaintiff be nonsuited for that reason; but the venue shall be changed to the proper county by the supreme court with the costs of the motion, if notice of a motion for that purpose shall be given before the expiration of the time of pleading; but no such motion shall be granted, unless the defendant making the same, shall have made and served with the notice of such motion, an affidavit of merits.

§ 47. Issues of fact in suits and proceedings in equity, if in the county court, shall be tried therein, and if in the supreme court, the same shall be tried in the county where said court shall direct.

§ 48. All issues of fact pending and untried in the supreme court or any court of common pleas on the first Monday of July next, shall be tried in the county in which the venue shall be laid.

§ 49. The supreme court organized by this act, shall have power to order any issue of fact joined in any suit or proceeding at law or in equity, whether joined in the supreme court or any county court or other court, to be tried in any other county, on good cause shown therefor, and on such terms, and under such rules and regulations as said supreme court shall prescribe. And after the trial thereof, the clerk of the county in which the same shall have taken place, shall certify the minutes thereof, which shall be filed with the clerk of the county where said issue was joined, or the clerk of such other court, and thereupon the proceedings may be continued in said suit or proceeding in said last mentioned county, as if said issue had been tried in that county.

§ 50. All bills and petitions, or other papers to be filed on the commencement of any suit or proceeding in equity shall be filed in the office of the clerk of the county where the defendants, or some or one of them shall reside, unless the object of such suit or proceeding be to obtain a specific performance of a contract to convey lands, to stay proceedings in ejectment, to prevent or abate a nuisance, to prevent waste, to prevent injury to real property, for admeasurement of dower, partition of lands, or to foreclose a mortgage upon lands, in which cases said papers shall be filed with the clerk

of the county in which said lands, or some portion of them, are situated. But if all the defendants or parties proceeded against reside out of the state, said papers, except in the cases above specified, may be filed in any county. And all papers and proceeding in suits and proceedings in equity, shall be filed, and all orders and decrees, wherever made, shall be entered and all decrees enroled in the office of the clerk of the county where the petition or bill or first papers were filed, unless the supreme court shall by an order direct the papers in such suit to be transferred to the office of the clerk of some other county.

Motions in
sup. court
when to be
made.

§ 51. All motions in the supreme court organized by this act, both enumerated and non-enumerated, shall be made in the county in which the venue in the suit shall be laid, or in an adjoining county. And if no suit be pending, or if said motion be the first proceeding in any suit, the motion shall be made in the county where the parties in such suit or person against whom the same is made, or some or one of them reside, or in an adjoining county. And motions in said court in suits and proceedings in equity after the first Monday of July next, shall be made in the county where said suit or proceeding is pending, or in an adjoining county; and in suits and proceedings in equity pending on the first Monday of July next in the county where the defendants or some of them reside, or in an adjoining county.

Decrees in
equity and
judgments in
sup. court.
where to be
docketed.

§ 52. Decrees in equity may be docketed with the clerk of the county where they shall be enroled, and with the docket of judgments in the supreme court; and all judgments in the supreme court and county court shall be docketed in the county where the record shall be filed in the same manner as judgments in the court of common pleas are now docketed, except that all judgments and decrees in any court of record docketed on and after the first Monday of July next, in any county, shall be docketed in the same book; and any judgment or decree so docketed, shall bind and be a lien and charge upon lands and tenements, real estate and chattels real in said county, which any person against whom said judgment or decree was rendered, may have at the time of docketing the same, or shall acquire at any time thereafter, in the same manner, for the same time, and with like effect, as judgments rendered in the court of common pleas and duly docketed now are, and a transcript of the docket of any decree of the present court of chancery, or judgment of the present supreme court, or of the present court of common pleas, or judgment or decree of the supreme court or county court organized by this act may be filed and docketed with the clerk of any county, and shall thereupon bind and be a lien and charge upon lands, tenements, real estate, and chat-

tels real in the county where said transcript is filed, and said judgment or decree docketed, from the time of filing and docketing the same, and in the same manner, and with like effect, and for the same length of time from the time of filing the record or enrolling the decree, as judgments in the courts of common pleas now are.

§ 53. All records of judgments and enrolments of decrees shall be signed by the clerk of the court filing the same without any fee or charge therefor. Records &c., by whom signed.

§ 54. Executions to collect judgments in the supreme or county courts organized by this act, and to collect the amount of any decree in equity in said courts directing the payment of any debt, damages, costs or sum of money, may be issued out of the court in which said judgments or decrees shall be rendered, in any county, within the time and with like effect as they may now be issued upon judgments rendered in the supreme court. Executions how issued.

§ 55. Executions may be issued out of the supreme court organized by this act, into any county to collect any judgment in the present supreme court, rendered on or before the first Monday of July next, and to collect any decree in chancery made on or before that day, directing the payment of any debt, damages, costs or sum of money, within the time and with like effect as they may be now issued from those courts. And executions may be issued out of the county court organized by this act, to collect any judgment in the present court of common pleas of the same county, within the same time and with like effect as they may now be issued out of that court. Executions may be sent to any county.

§ 56. All process which shall have been issued before the first Monday of July next, but returnable after that day, except subpoenas for witnesses, shall be returned as follows: If issued out of the present supreme court or court of chancery, they shall be filed with the clerk of the court of appeals, on or before the return day thereof; and if issued out of any court of common pleas, they shall be filed with the clerk of the county in which the judgment was rendered on or before the return day thereof; and all such process may be in the same form and shall be as valid as if said courts had remained unchanged. Process issued before, where to be filed.

§ 57. Any process issued out of any court of record on or after the first Monday of July next, may be tested on any day in term or vacation, in the name of any judge of the court out of which it shall issue and shall be returnable before said court within the time now provided by law, and shall be filed with the clerk of the court in which the suit or proceeding shall be pending; and if it be to collect or enforce any judgment or decree, it shall be filed with the clerk with whom Test and return of process.

the judgment record is filed or decree is enrolled; if to collect or enforce any judgment or decree in the present supreme court or court of chancery, then with the clerk of the court of appeal; if to collect any judgment in any court of common pleas that shall be abolished on the first Monday of July next, then with the county clerk of the same county; and if a *capias ad respondendum* issuing out of the supreme court, it shall be returnable before the supreme court in the county in which the venue is intended to be laid on some day in term or vacation, to be specified therein, and shall be returned to and filed with the clerk of that county, and the appearance of the defendant within the time now required, shall be entered in the office of said clerk; and if a *capias ad respondendum* issuing out of the county court, it may be returnable on any day, in term or vacation, to be specified therein. Every court of record shall always be open for the issuing and return of process; and no process which shall be subscribed with the name of the attorney, solicitor, or party by whom it is issued, except such as shall be issued by special order of the court, shall be deemed void or voidable, by reason of having no seal, or a wrong seal thereon, or of any mistake, or omission in the test thereof, or in the name of the clerk of the court out of which it shall be issued.

Courts of record always open.

Writs of scire facias to revive judgments in present sup. court or com. pleas how issued and returned.

§ 58. Writs of *scire facias* to revive any judgment in the present supreme court, or to have execution thereof, or to revive any suit in that court, or any suit in the court of common pleas, which shall on that day be vested in the supreme court organized by this act, may on and after the first Monday of July next, be issued out of, and be returnable in the last mentioned supreme court; and such writs to revive any judgment in any court of common pleas which shall cease to exist on that day, or to have execution thereof, or to revive any suit in said court not vested as aforesaid, may be issued on and after that day, out of, and be returnable in the county court of the same county. And all such writs shall issue in the same manner, with like effect, and within the time now allowed by law; and if issued out of the supreme court, shall be made returnable to and filed in the office of the clerk of the county in which the venue in the original suit was laid.

Judgments, &c., pending in com. pleas vested in sup. court to be reviewed in same court.

§ 59. Any judgment or decision in any suit or proceeding pending in any court of common pleas on the first Monday of July next, which shall on that day become vested in the supreme court organized by this act, may be reviewed, and other proceedings had therein by said supreme court, in the same manner as can now be done by said court of common pleas or by the present supreme court on a writ of error, *certiorari* or *mandamus*. And any decision in any suit or proceeding in a court of common pleas which on that day shall not be

vested in the supreme court organized by this act, may be reviewed and new trial granted, or other proceedings had therein, in the proper county court, in the same manner as can now be done by a court of common pleas.

§ 60. All suits and proceedings pending in the present supreme court on the first Monday of July next, and ready for hearing, may be heard and decided either by the present supreme court, or by the supreme court organized by this act, at any time previous to the first day of July, eighteen hundred and forty-eight; and if any such cause shall be noticed before both of said courts, any one of the justices of the present supreme court may direct before which court the same shall be heard. And all suits and proceedings pending in the court of chancery before the chancellor, on the first Monday of July next, and ready for hearing, may be heard and decided by the chancellor, or person appointed to fill the office of chancellor, or before the supreme court organized by this act, at any time previous to the first day of July, eighteen hundred and forty-eight; and if any such cause shall be noticed before the chancellor, and also before the supreme court organized by this act, the chancellor may direct before which court the same shall be heard.

Suits and proceedings in present sup. court and court of chancery when to be decided.

§ 61. All suits and proceedings pending in the court of chancery, before any vice chancellor, or assistant vice chancellor, on the first Monday of July next, and ready for hearing, shall be heard and decided by the supreme court organized by this act.

Suits before V. C. to be heard in sup. court.

§ 62. No judgment shall be entered in the present supreme court after the first Monday of July next, and any decision made after that day in said court shall be certified to such county clerk as said court shall direct, and upon filing said certificate with said clerk, judgment in conformity with said decision may be entered up and enforced in the supreme court organized by this act, or such other proceeding had therein as shall be necessary to carry said decision into effect; and except for the purpose of hearing and determining said suit or proceeding as aforesaid the same shall be deemed transferred to the supreme court last mentioned on the first Monday of July next.

No judgment to be entered in present S. C. after 5th July, 1847.

Decisions to be certified.

§ 63. No order or decree shall be entered or decree enrolled in the court of chancery after the first Monday of July next, and upon any decision, decree or order being made after that day in said court, the register shall settle the order or decree under the direction of the chancellor or person appointed to fill the office of chancellor, and the same with the decision in the suit or proceeding shall be certified to such county clerk as the chancellor or person so appointed shall direct, and the papers in the cause shall be remitted to said

No order, &c., to be entered in court of chancery after, &c.; decisions to be certified.

clerk, and upon filing said certificate and papers with said clerk, said decree or order may be entered and said decree enrolled and docketed by said clerk, and said decree or order enforced as a decree or order of the supreme court organized by this act, or such other proceedings had therein as shall be necessary to carry such decision into effect; and except for the purpose of hearing and deciding said suit or proceeding as aforesaid, and settling the decree or order, the same shall be deemed transferred to the supreme court last mentioned on the first Monday of July next.

When suits and proceedings in present supreme court and court of chancery to be transferred.

§ 64. All suits and proceedings in the present supreme court or the court of chancery or before the chancellor which shall be ready for hearing or decision on the first Monday of July, eighteen hundred and forty-seven, and which shall not have been heard and determined previous to the first day of July, eighteen hundred and forty-eight, shall, from and after the last mentioned day be deemed wholly transferred to and vested in the supreme court organized by this act, and all papers, documents, records, books and property then in the custody of the register in chancery or the clerk of the present supreme court relating to such suits and proceedings, shall by them be delivered to the clerk of the court of appeals.

Clerks of counties to be clerks of circuit courts, &c.

§ 65. The clerks of the several counties including the city and county of New-York, by virtue of their offices shall be clerks of the circuit courts, courts of oyer and terminer, and except in the city and county of New-York, of the county courts and courts of sessions within their respective counties; and all laws relative to the duties of the clerks of the present supreme and circuit courts, courts of oyer and terminer, general sessions of the peace and common pleas of their respective counties, so far as the same are consistent with the constitution and the provisions of this act, shall apply to them as clerks of the supreme court, circuit courts, courts of oyer and terminer, county courts and courts of sessions in their respective counties. And all laws relative to the duties of register, assistant register and clerks in chancery, so far as the same are consistent with the constitution and the provisions of this act, shall be deemed to apply to the duties of said clerks in suits and proceedings in equity in the courts of which they shall be clerks.

Register in chancery how long continued.

§ 66. The office of register in chancery is hereby continued until the first day of July, eighteen hundred and forty-eight, or until all suits and proceedings ready for hearing or decision in said court shall be sooner heard and determined and no longer; and any vacancy in said office during that time may be filled by the chancellor or person appointed to fill a vacancy in the office of chancellor; and all property,

books of every kind, records, documents and papers remaining in the office of said register on the termination of said office, shall within ten days thereafter be deposited by said register with the clerk of the court of appeals who shall receive and keep the same in his office subject to the order of the supreme court organized by this act. The register shall attend all the terms held by the chancellor after the first Monday of July next.

Records and papers, &c., where to be deposited.

§ 67. The office of clerk of the present supreme court to reside at Albany, is hereby continued until the first day of July, eighteen hundred and forty-eight, or until all suits and proceedings in said court ready for hearing and decision shall be sooner heard and determined and no longer; and any vacancy in said office during that time may be filled by the justices of the present supreme court or the persons appointed to fill vacancies in the office of said justices; and all property, books of every kind, records, documents and papers remaining in the office of said clerk on the termination of said office, shall within ten days thereafter be deposited by said clerk with the clerk of the court of appeals, who shall receive and keep the same in his office subject to the order of the supreme court organized by this act. Said clerk of the supreme court shall attend all the terms of said court after the first Monday of July next.

Clerk of present sup. court at Albany, how long continued.

§ 68. The offices of assistant register and clerk in chancery and sergeant of that court are abolished from and after the first Monday of July next, and within twenty days thereafter the register and the clerks in chancery shall deliver all property, books of every kind, records, dockets, documents and papers deposited in and belonging to their respective offices to the clerk of the court of appeals; and the assistant register and clerk of the first circuit shall within the time aforesaid deliver to the clerk of the court of appeals all books of reports deposited in his office, and to the clerk of the city and county of New-York all other books and all property, records, documents and papers deposited in or belonging to his office, except as in this act otherwise directed.

Office of assistant register, &c., abolished.

§ 69. The office of clerk of the present supreme court (except that of the clerk to reside in Albany,) and crier of that court are abolished from and after the first Monday of July next; and within twenty days thereafter all the clerks of the present supreme court shall deliver all property, books of every kind, records, dockets, documents and papers deposited in or belonging to their respective offices, to the clerk of the court of appeals, except as follows: The clerk of the said court residing at Geneva shall within twenty days after the first Monday of July next, deliver all books in

Office of clerk of sup. court except, &c., abolished.

his office containing the dockets of judgments, to the clerk of the county of Ontario, and within the time aforesaid, the clerk of said court residing at Utica shall deliver all books in his office containing dockets of judgments, to the clerk of the county of Oneida; and within the time aforesaid, the clerk of said court residing in the city of New-York shall deliver all property, books, records, dockets, documents and papers in his office except books of law reports and statutes, to the clerk of the city and county of New-York, and said books of law reports and statutes he shall deliver to the clerk of the court of appeals.

Certain clerks may give certified copies and transcripts.

§ 70. Any clerk with whom said papers, records, documents and dockets shall be deposited may make copies and transcripts thereof and certify the same and receive therefor the fees now allowed by law, and all fees so received by the clerk of the court of appeals shall be paid by him into the treasury of this state. Such copies and transcripts duly certified, may be read in evidence with like force and effect as the original paper, record, document or docket.

Bonds, mortgages and securities vested in the clerk of the court of appeals.

§ 71. On and after the first Monday of July next, all bonds, mortgages, stocks and securities taken in the name of the register, assistant register or any clerk of the court of chancery, or any clerk of the present supreme court, or standing in his name on that day, and all moneys deposited in the New-York Life Insurance and Trust Company or in any bank or savings bank in the name of such register, assistant register or clerk, or then in the hands of any of them not invested or deposited, shall be, and the same hereby are on that day vested in the clerk of the court of appeals by virtue of his office. And all such bonds, mortgages and other securities may be sued for in the name of office of said clerk of appeals in the same manner and with like effect as if the same had been originally taken in his name as such clerk. Within twenty days after the first Monday of July next, the register, assistant register and the several clerks of the courts of chancery and the clerks of the present supreme court shall deliver to the said clerk all the bank books and account books in their offices respectively, containing entries relating exclusively to the moneys, funds and securities standing in their names or under their control, and all bonds, mortgages, securities, certificates of stock or of deposits, and vouchers relating thereto; and all moneys directed to be brought into the court of chancery or into the present supreme court, and which shall not have been brought into court before the first Monday of July next shall be deposited with said clerk or in one of the banks in which the deposits of the register and assistant register are now required to be kept, and in the name of such

Duty of register, assistant register, &c.

clerk. And all moneys which shall be directed to be brought into court by the supreme court organized by this act or by any county court, shall be paid by said clerk or deposited with such incorporated company or in such bank as the court shall direct in the name of the said clerk; and the supreme court shall from time to time prescribe in what bank or banks or incorporated companies moneys brought into court by order of any court shall be deposited or kept. All bonds and securities which have hitherto been taken in the name of the register or assistant register of the court of chancery, or any clerk of the said court, or of the supreme court or county court, shall, on and after the first Monday of July next be taken in the name of office of the clerk of the court of appeals, and may be sued by him in his name of office, and on and after the first Monday of July next all laws now in force relative to receiving, safe keeping, investing and disbursing, or the transfer of any moneys, stocks or securities brought into the court of chancery, and to the duty of the court and of the register, assistant register and clerks in chancery in relation thereto shall apply to the supreme court organized by this act, and to the county courts, and said clerk for the court of appeals so far as the same are applicable. And all the rules and regulations of the present court of chancery relative to the receiving, keeping and disbursing any of the funds in the court of chancery or depositing or investing the same so far as applicable, shall continue in force subject to the rules and regulations that may be prescribed by the supreme court organized by this act; and said court shall as soon as conveniently may be, and from time to time make such rules and regulations concerning the moneys, stocks and securities in the custody of said court, and concerning the making of deposits, keeping accounts and paying any money of said court as such court shall deem necessary.

Rules re-
specting the
keeping of
funds.

§ 72. The clerk of the court of appeals shall procure a seal for that court, on which shall be engraved "Court of Appeals, New-York," with the word "Seal" in the centre thereof. And every county clerk shall procure and keep a seal, on which shall be engraved the name of the county of which he is clerk, and the word "seal," which seal shall be the seal of the supreme court in said county, and the seal of the circuit court and the court of oyer and terminer, and, except in the city and county of New-York, of the county court in said county. And the seals of the surrogates of the respective counties of this state, shall continue to be the seals of the surrogates' courts of said counties, and shall be kept and used as such by the county judge or other officer authorized to perform or discharge the duties of the office of sur-

Seal of court
of appeals.

Do. of sup.
court, &c.

Do. of surro-
gates courts.

rogate; a description of each of said seals shall be deposited or recorded in the office of the secretary of state, which description shall remain of record.

"State reporter," how appointed.

§ 73. There shall be a reporter of the decisions of the court of appeals, to be denominated "state reporter," who shall be appointed by the governor and lieutenant governor, and hold his office for three years, but may be removed by the concurrent vote of both branches of the legislature. It shall be his duty to report every cause argued and determined in that court, which it shall direct him to report, and such others as the public interests shall, in his judgment require to be reported. To enable him to perform this duty, the judges of that court shall deliver to him their written opinions in all causes, in which their oral opinions in deciding the same shall not be delivered in open court. Every such cause shall be reported within three months from the time it shall be decided. The reporter shall have no pecuniary interest in such reports, but they shall be published by the secretary of state, under the supervision of the reporter, by contract to be entered into, pursuant to the provisions of the act, entitled "An act in relation to the public printing," passed March 5, 1846. Such contract shall be made with the person who, in addition to furnishing to the said secretary, sixty-four copies of each volume of said reports, bound in leather, as soon as may be after the same is prepared, shall agree to publish and to sell them at the lowest price, by the number and volume, according to the pages therein contained; such reports shall be published in numbers, every second month. And the reporter shall prepare for each volume such digests and tables of contents as are usually prepared for similar reports. If the reporter shall neglect to discharge his duty faithfully, it shall be the duty of the said court to report that fact to the legislature, to the end that he may be removed from office. The reporter shall not practice as an attorney, counsellor or solicitor in any court.

His duty.

Reports, how published.

Table of contents to be prepared.

Secretary of state to distribute reports.

§ 74. Of the copies of each volume of said reports so delivered to the secretary of state, he shall deliver one copy to each clerk of the several counties, to be kept by said clerk for the use of the county, and deposit one copy in the office of the attorney-general, one copy with the clerk of the court of appeals, for the use of that court, and three copies in the state library.

Solicitors and attorneys.

§ 75. Every person who shall be a solicitor in chancery, or attorney in the supreme court of this state, on the first Monday of July next, shall be entitled to practice as attorney, solicitor and counsellor in all the courts of this state; and every person who shall be an attorney of the court of common pleas of any county on the first Monday of July

next, shall be entitled to practice in the county court of the same county; and every male citizen of the age of twenty-one years, applying to be admitted to practice as attorney, solicitor and counsellor in the courts of this state, shall be examined by the justices of the supreme court, which examination shall be at a general term thereof; and if such person so applying shall be found to be of good moral character, and to possess the requisite qualifications of learning and ability, the court shall direct an order to be entered by the clerk thereof, stating that such person has been so examined and found to possess the qualifications required by the constitution; and thereupon such person shall be entitled to practice as an attorney, solicitor and counsellor in all courts in this state, until he shall be suspended from such practice, for cause as hereinafter provided. A copy of such order, certified by such clerk, shall be presumptive evidence of the right of such person to practice as aforesaid; and said court shall, by general rules, prescribe what shall be deemed sufficient proof of good moral character, and no term of clerkship or period of study shall be required. The supreme court organized by this act shall possess the same power to remove or suspend any attorney, solicitor and counsellor, as is now possessed by the present supreme court and court of chancery.

Who entitled to examination and admittance.

General rules to be prescribed.

Sup. court may remove or suspend any attorney &c.

§ 76. All suits and proceedings against any absconding, non-resident, concealed or fraudulent debtor, or against or by any imprisoned or insolvent debtor, for the removal of a tenant or other person from lands, to take testimony, for the justification of bail or surety, for the appointment of a guardian or next friend, or for the production and discovery of books and papers, or to obtain a bill of particulars of any demand or set off, and any proceeding for a forcible entry and detainer, for the arrest of any fugitive from justice, or service of a writ of habeas corpus, against any corporation, against any person charged with crime, on an appeal from the determination of any commissioner or commissioners of highways, and in any other special matter, suit or proceeding, pending before any justice of the supreme court, circuit judge, vice chancellor or assistant vice chancellor, judge of the existing county courts or supreme court commissioner, on the first Monday of July next, shall, by an order to be made by the officer before whom the same shall be pending, and on such notice as said officer shall direct, be transferred to a justice of the supreme court organized by this act, or county judge, or local officer elected to discharge the duties of county judge and surrogate, or officer now authorized to hear and determine such suit or proceeding, and who shall continue in office after the day last aforesaid; and thereupon

Certain proceedings pending against absconding and other debtors &c., transferred to a justice of the sup. court organized by this act, county judge, &c.

such justice, judge or other officer shall possess the same power, and exercise the same jurisdiction over such suit or proceeding, as the officer before whom the same was commenced, could have done, had he continued in office; and if for any cause said order of transfer shall not be made, the supreme court organized by this act, on the application of either party, may by order, make such transfer to such justice, judge or other officer, and any suit or proceeding so transferred, shall not in any manner be abated, or otherwise affected thereby.

Suits and
causes may
be referred.

Sheriffs to
sell lands in
certain
cases.

§ 77. On and after the first Monday of July next, courts of record may, by an order to be entered in any suit or proceeding at law or in equity, refer any matter heretofore usually referred, to any clerk, master in chancery or referee, to a clerk of the same court, or to any county judge or local officer, elected to discharge the duties of county judge and surrogate, or other suitable person or persons, in the same manner as references have heretofore been made to any officer or person by any court, and with the same powers as have heretofore been possessed by such officer or person. And on and after that day, sheriffs may sell any lands in their respective counties ordered to be sold by any decree of any court of record in this state, and give conveyances thereof in the same manner, and with like effect, as is now done by a master in chancery. The sheriff shall receive his disbursements for printers' fees. He shall also be entitled to receive the same fees as upon sales by virtue of an execution, but such fees shall in no case exceed the sum of ten dollars. If the amount bid on any such sale, or any part of such amount shall be credited on the decree of sale, or be bid by the person or party in whose favor the decree shall be made, the fees of the sheriff shall be estimated upon the surplus, over and above the amount so credited or bid by such person or party; but if the fees upon the whole sum bid on such sale, would amount to more than five dollars, in case no part thereof were so credited or bid by such person or party, the sheriff shall be entitled to five dollars if the fees on the sum actually paid would not amount to that sum.

Testimony
may be taken
on interrogatories.

§ 78. On and after the first Monday of July next, the testimony of any competent witness may be taken in this state, to be used in any civil suit or proceeding, on an agreement in writing to that effect being made between the parties, their attorneys or solicitors, and on interrogatories to be agreed upon in the same manner. Said testimony may be taken before a judge of any court of record of this state, or local officer elected to discharge the duties of county judge, or a justice of the peace of this state, who shall, before the interrogatories are put to him, publicly administer an oath to

the witness that the answers given to said interrogatories shall be the truth, the whole truth, and nothing but the truth; and the testimony shall be truly and carefully reduced to writing by the officer, and read to the witness and subscribed by him, and certified by the officer. The testimony so taken, together with the interrogatories, shall be filed with the clerk of the courts in which the suit or proceeding shall be pending; and if in the supreme court, and taken in a suit or proceeding at law, the same shall be filed with the clerk of the county in which the venue is laid; if in equity, with the clerk of the county in which the suit or proceeding shall be pending; and if before any court or officer having no clerk, then with said court or officer. And said testimony may be used in evidence on any trial or hearing of such suit or proceeding, and every objection to the competency or credibility of said witness, or to the competency and relevancy of any answer given by him, may be made in the same manner and with the like effect as if such witness were personally examined at such trial or hearing.

Testimony
where to be
filed.

§ 79. The attendance of the witnesses before said officer to answer said interrogatories may be enforced in the same manner as now provided by the third title of chapter seven of part third of the Revised Statutes. And any witness who shall swear falsely in answering said interrogatories, shall on conviction thereof, be liable to all the pains and penalties of perjury, in the same manner as if said testimony had been given orally at the trial or hearing of such suit or proceeding.

Attendance
of witnesses
how enforced.

§ 80. When a cause shall be on the calendar of any court, for the trial of any issue or issues of fact, the said issue or issues may, by consent of all the parties in said cause, be tried by the judge or officer holding said court, without a jury, and the finding of the judge or officer, on said issue or issues of fact, shall in all respects have the same effect as a verdict of a jury thereon and no other; and the said court or judge shall decide all questions of law arising on the trial of such issue or issues, in the same manner as though said cause was tried by a jury; and the practice and rules of the proper courts, as to exceptions, points, cases, bills of exceptions and writs of error, shall be applicable and in the same manner as if the cause had been tried by a jury. But nothing in this section shall be deemed to apply to any action for assault and battery, false imprisonment, slander, libel, breach of promise of marriage, criminal conversation, or for seduction of plaintiff's daughter or servant. Nor shall anything herein contained be deemed to deprive any court of the power to refer any cause in cases now referable by law.

Judge alone
may try issue
of fact by
consent of
parties.

No judge interested to have a voice in deciding a cause.

No judge or justice can practice as attorney, &c.

Moneys directed to be deposited and kept in counties, where paid in.

§ 81. No judge of any court shall have a voice in the decision of any cause in which he has been counsel, attorney or solicitor, or in the subject matter of which he is interested.

§ 82. No judge of the court of appeals, or justice of the supreme court shall practice as an attorney, solicitor or counsellor in any court in this state. No county judge shall practice in or act as counsellor, solicitor or attorney in the court of which he is judge, nor shall the partner of such judge practice as counsellor, solicitor or attorney, in his court.

§ 83. All moneys in the custody or under the control of the court of chancery or of the supreme court on the first Monday of July next, shall be deposited, remain, kept and invested in the counties in which the same were paid in, as near as conveniently can be with safety and advantage to the parties interested. And all moneys that shall be paid or directed to be brought into the supreme court or county courts organized by this act, shall be by the order of the court deposited or invested in the county where the same shall be paid or brought in, as nearly as conveniently can be with safety and advantage to the parties interested.

CHAP. 281.

AN ACT to release to Nancy Shortall, certain lands in the town of Attica, in the county of Wyoming, of which Owen McGirl, her late husband, died seised.

Passed May 12, 1847, "by a two-third vote."

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

Lands released to Nancy Shortall.

§ 1. All the estate and interest of the people of this state, in and to all that tract of land situate in the town of Attica, in the county of Wyoming and state of New-York, being the south parts of lots numbers seven and eight, in the thirteenth section in said town, containing fifty acres, being the same land conveyed by Heman J. Redfield and others, to Owen McGirl by deed, which is recorded in the office of the clerk of the county of Genesee, in Liber fifty of deeds, at page one hundred and sixty-six ; also that other tract of land, situate in the town of Orangeville, in said county of Wyoming, being the northwest corner of lot number sixty-four, in said town of Orangeville, containing twenty-one acres and sixty-two hundredths of an acre, being the land conveyed to the said Owen McGirl, by John C. Salisbury and wife, by a deed which is recorded in the office of the clerk of the county of Wyoming, in Liber seven of deeds, at page two hundred