

thus cancelled, shall be transmitted to the Treasurer of this State without delay, and deposited in his office, there to remain. And it is hereby further declared that it shall be deemed to be a good execution of the said power to borrow, for the Governor of this State to cause the said certificates of stock, or any part thereof, to be sold: *Provided*, That such certificates of stock shall not in any case be sold for less than their par value.

Duty of Aud.
& Treasurer.

SEC. 3. It shall be the duty of the Auditor and Treasurer to procure a sufficient number of blank certificates of stock, and the necessary books, the expense of which shall be paid out of any money in the treasury not otherwise appropriated.

APPROVED, March 1, 1839.

In force, June
1, 1839.

AN ACT defining and regulating proceedings in the action of ejectment.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the action of ejectment shall be retained, and may be brought in the cases and the manner heretofore accustomed, subject to the provision hereinafter contained.

When action
may be bro't.
First.

SEC. 2. It may also be brought—

1st. In the same cases in which a writ of right may now be brought by law to recover lands, tenements, or hereditaments, and by any person claiming an estate therein in fee or for life, either as heir, devisee, or purchaser.

Second.
By widow.

2d. By any widow entitled to dower, or by a woman so entitled and her husband, after the expiration of six months from the time her right accrued, to recover her dower of any lands, tenements, or hereditaments.

SEC. 3. No person shall recover in ejectment unless he has, at the time of commencing the action, a valid subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or of some share, interest, or portion thereof, to be proved and established at the trial.

If premises
are occupied.

SEC. 4. If the premises for which the action is brought are actually occupied by any person, such actual occupant shall be named defendant in the declaration; if they are not so occupied, the action shall be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein, at the commencement of the suit.

Action, how
commenced.

SEC. 5. The action shall be commenced by the service of a declaration, in which the names of the real claimants shall be inserted as plaintiffs; and all the provisions of law concerning lessors of a plaintiff shall apply to such plaintiffs.

Use of ficti-
tious names,
&c., abolish-
ed.

SEC. 6. The use of fictitious names of plaintiffs or defendants, and of the names of any other than the real claimants and the real defendants, and the statements of any lease or

demise to the plaintiff, and of an ejectment by a casual or nominal ejector, are hereby abolished.

SEC. 7. It shall be sufficient for the plaintiff to aver in his declaration that (on some day therein to be specified, and which shall be after his title accrued) he was possessed of the premises in question, (describing them as hereinafter provided) and being so possessed thereof, that the defendant afterwards, (on some day to be stated) entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage any nominal sum the plaintiff shall think proper to state; and the premises so claimed shall be described in such declaration with convenient certainty, so that, from such description, possession of the premises claimed may be delivered. If such plaintiff claims any undivided share or interest in any premises, he shall state the same particularly in such declaration.

SEC. 8. If the action be brought for the recovery of dower, the declaration shall state that the plaintiff was possessed of the one undivided third part of the premises, as her reasonable dower, as widow of her husband, naming him. In every other case the plaintiff shall state whether he claims in fee, or whether he claims for his own life, or the life of another, or for a term of years, specifying such life or the duration of such term.

SEC. 9. In any case other than where the action shall be brought for the recovery of a dower, the declaration may contain several counts, and several parties may be named as plaintiffs jointly in one count, and separately in others.

SEC. 10. To such declaration their shall be subjoined a notice, in writing, by the plaintiff or his attorney, addressed to the defendant, and notifying him—

1st. That the said declaration will be filed on some day in the then next term of the court in which the action is brought, specifying such day; or, if the same be served during the term of any court, that it will be filed on some day in such term, specifying the same.

2d. That, upon filing the same, a rule will be entered requiring such defendant to appear and plead to such declaration, within twenty days after the entry of such rule; and,

3d. That, if he neglect so to appear and plead, a judgment by default will be entered against him, and the plaintiff will recover possession of the premises.

SEC. 11. If the premises are actually occupied, the declaration shall be served by delivering a copy thereof, with the notice above prescribed, to the defendant named therein who shall be in the occupancy thereof, or by leaving the same with some white person of the family, of the age of ten years or upwards, at the dwelling-house of such defendant, if he be absent.

SEC. 12. If the premises claimed are not actually occupied, the declaration and notice shall be served on the defendant

Averment of plaintiff.

If for dower.

In other cases

Notice with declaration.

First. Declaration filed.

Second. Rule entered.

Third. Judgment by default.

Service of declaration.

If premises are not occupied.

named therein, or, if he cannot be found, by leaving the same with some white person, of the age of ten years or upwards, at the residence of the defendant; but where the declaration shall have been served in any other manner than upon the defendant personally, no rule to plead shall be entered without the special order of the court.

Affidavit of service.

SEC. 13. Instead of the rule to appear and enter into the consent rule as heretofore accustomed, the plaintiff, on the day specified for that purpose in the notice aforesaid, or on some day thereafter, upon filing the declaration with an affidavit of the service of a copy thereof, and of the notice hereinbefore required, shall be entitled to enter a rule requiring the defendant to appear and plead within twenty days after the entering of such rule; and in case the defendant shall neglect so to appear and plead within such time, his default shall be entered.

Defendant may apply for authority of plaintiff to commence suit.

SEC. 14. A defendant in ejectment may, at any time before pleading, apply to the court, or to any judge thereof in vacation, to compel the attorney for the plaintiff to produce to such court or officer his authority for commencing the action in the name of any plaintiff therein. Such application shall be accompanied by an affidavit of the defendant that he has not been served with proof, in any way, of the authority of the attorney to use the name of the plaintiff stated in the declaration.

Court to grant order.

Proceedings stayed.

SEC. 15. Upon such application, the court or officer shall grant an order requiring the production of such authority, and shall stay all proceedings in the action until the same shall be produced. Any written request of such plaintiff or his agent to commence such action, or any written recognition of the authority of the attorney to commence the same, duly proved by the affidavit of such attorney, or other competent witness, shall be sufficient presumptive evidence of such authority.

Application, when dismissed.

SEC. 16. If it shall appear that, previous to such application by any defendant, he was served with a copy of the affidavit of the plaintiff's attorney showing his authority to bring such action, such application shall be dismissed; and such defendant shall be liable for the costs of such application, the payment of which may be compelled by attachment as in other cases, which may be issued upon proof of disobedience to the order of the court or officer directing the payment of such costs.

Payment of costs.

Defendant may demur.

SEC. 17. The defendant may demur to the declaration as in personal actions, or he shall plead the general issue only, which shall be that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff as alleged in the declaration; and the filing of such plea or demurrer shall be deemed an appearance in the cause; and upon such plea, the defendant may give the same matter in evidence, and the same proceedings shall be had, as upon the plea of not guilty in the present action of ejectment, except as herein otherwise

Filing plea.

Evidence of defendant.

provided. The defendant may likewise give in evidence any matter which, if pleaded in the present writ of right, or action of dower, would bar the action of the plaintiff.

SEC. 18. The consent rule heretofore used is hereby abolished. Consent rule abolished.

SEC. 19. It shall not be necessary for the plaintiff to prove an actual entry under title, nor the actual receipt of any of the profits of the premises demanded; but it shall be sufficient for him to show a right to the possession of such premises at the time of the commencement of the suit, as heir, devisee, purchaser, or otherwise. Right to possession.

SEC. 20. It shall not be necessary on the trial for the defendant to confess, nor for the plaintiff to prove, lease, entry, and ouster, or either of them, except as provided in the next section; but this section shall not be construed to impair, nor in any way to affect, any of the rules of evidence now in force in regard to the maintenance and defence of the action.

SEC. 21. If the action be brought by one or more tenants in common, or joint tenants against their co-tenants, the plaintiff, in addition to all other evidence which he may be bound to give, shall be required to prove, on the trial of the cause, that the defendant actually ousted such plaintiff, or did some other act amounting to a total denial of his right as such co-tenant. Action bro't by tenants.

SEC. 22. If the action be brought against several defendants, and a joint possession of all be proved, the plaintiff shall be entitled to a verdict against all, whether they shall have pleaded separately or jointly.

SEC. 23. When the action is against several defendants, if it appear on the trial that any of them occupy distinct parcels in severalty or jointly, the plaintiff shall elect, at the trial, against which he will proceed; which election shall be made before the testimony in the cause shall be deemed to be closed; and a verdict shall thereupon be rendered for the defendants not so proceeded against. Verdict for defendant.

SEC. 24. In the following cases, the verdict shall be rendered as follows:—

1st. If it be shown on the trial that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally.

2d. If it appear that one or more of the plaintiffs have a right to the possession of the premises, and that one or more have not such right, the verdict shall specify for which plaintiff the jury find, and as to which plaintiff they find for the defendant. Verdict to specify.

3d. If the verdict be for any plaintiff, and there be several defendants, the verdict shall be rendered against such of them as were in possession of the premises, or as claimed title thereto, at the commencement of the action. Verdict for plaintiff.

4th. If the verdict be for all the premises claimed as specified in the declaration, it shall, in that respect, be for all premises generally. Verdict for all claims.

Verdict for part.

5th. If the verdict be for a part of the premises described in such declaration, the verdict shall particularly specify such part, as the same shall have been proved, with the same certainty hereinbefore required, in the description of the premises claimed.

Undivided share.

6th. If the verdict be for an undivided share or interest in the premises claimed, it shall specify such share or interest; and if for an undivided share in a part of the premises claimed, it shall specify such share, and shall describe such part of the premises as hereinbefore required.

Specifications of verdict.

7th. The verdict shall also specify the estate which shall have been established on the trial by the plaintiff in whose favor it shall be rendered, whether such estate be in fee, for his own life, or for the life of another, stating such lives; or whether it be for a term of years, and specifying the duration of such term.

Expiration of right.

SEC. 25. If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be returned according to the fact, and judgment shall be entered that he recover his damages by reason of the withholding of the premises by the defendant, to be assessed; and that as to the premises claimed, the defendant go thereof without delay.

Action not to abate by death of plaintiff.

SEC. 26. The action of ejectment shall not be abated by the death of any plaintiff, or of one of several defendants, after issue and before verdict and judgment, but the same proceedings may be had as in other actions, to substitute the names of those who may succeed to the title of the plaintiff so dying; in which case the issue shall be tried as between the original parties; and in case of the death of a defendant the cause shall proceed against the other defendants.

If action of plaintiff prevail.

SEC. 27. In cases where no other provision is made, the judgment in the action, if the plaintiff prevail, shall be, that the plaintiff recover the possession of the premises according to the verdict of the jury, if there was such verdict; or, if the judgment be by default, according to the description thereof in the declaration, with costs to be taxed.

Writ of possession.

SEC. 28. The plaintiff recovering judgment shall be entitled to a writ of possession, which shall be substantially in the following form:

THE PEOPLE, &C., TO THE SHERIFF, &C.:

“Whereas A. B. has lately, in the circuit court held in and for the county of _____ by the judgment of the said court, recovered against C. D., one messuage, &c., (describing the premises recovered with the like certainty as above provided,) which said premises have been and are still unjustly withheld from the said A. B. by the said C. D., whereof he is convicted, as appears to us of record; and forasmuch as it is adjudged in the said court that the said A. B. have execution upon his

said judgment against the said C. D., according to the force, form, and effect of his said recovery: Therefore, we command you, that, without delay, you deliver to the said A. B. possession of the premises so recovered, with the appurtenances; and that you certify to, &c., at, &c., on, &c., in what manner you shall have executed this writ. (If there be costs to be collected, the proper clause may be here inserted, or a separate execution may be issued therefor.)”

“Witness, &c.”

SEC. 29. Every judgment in the action of ejectment, rendered upon a verdict, shall be conclusive as to the title established, in such action, upon the party against whom the same is rendered, and against all persons claiming from, through, or under such party, by title accruing after the commencement of such action, subject to the exceptions hereinafter named. Judgment conclusive.

SEC. 30. The court in which such judgment shall be rendered, at any time within one year thereafter, upon the application of the party against whom the same was rendered, his heirs or assigns, and, upon the payment of all costs and damages recovered thereby, shall vacate such judgment, and grant a new trial in such cause; and the court, upon subsequent application made within one year after the rendering of the second judgment in said cause, if satisfied that justice will thereby be promoted, and the rights of the parties more satisfactorily ascertained and established, may vacate the judgment, and grant another new trial; but no more than two new trials shall be granted under this section. Court may vacate judgment.

SEC. 31. Every judgment in ejectment, rendered by default, shall, from and after two years from the time of entering the same, be conclusive upon the defendant, and upon all persons claiming from or through him by title accruing after the commencement of the action; but within two years after the entering of such judgment, on the application of the defendant, his heirs or assigns, and upon the payment of all costs and damages recovered thereby, the court may vacate such judgment, and grant a new trial, if such court shall be satisfied that justice will be promoted, and the rights of the parties more satisfactorily ascertained and established. Judgment by default.
New trial.

SEC. 32. But if the defendant in such declaration, at the time of the entering the judgment by default, be either, 1st, within the age of twenty-one years; or, 2d, insane; or, 3d, imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence for any term less than for life; or, 4th, a married woman, the time during which such disability shall continue shall not be deemed any portion of the said two years; but any such person may bring an action for the recovery of such premises after that time, and within two years after such disability shall be removed, but not after that period. Disabilities, for which time may be prolonged.

SEC. 33. If the person entitled to commence such action shall die during the continuance of any disability specified in

Heirs may commence action.

the preceding section, and no determination or judgment be had of or upon the title, right, or action so to him accrued, his heirs may commence such action after the time above limited for that purpose, and within two years after his death.

Possession not affected by vacating judgment.

SEC. 34. If the plaintiff shall have taken possession of the premises by virtue of any recovery in ejectment, such possession shall not in any way be affected by the vacating of any judgment as herein provided; and if the defendant recover in any new trial hereby authorized, he shall be entitled to a writ of possession, in the same manner as if he was plaintiff.

Matters in bar of recovery.

SEC. 35. Upon any new trial granted as herein provided, the defendant may show any matters, in bar of a recovery, which he might show to entitle him to the possession of the premises if he were plaintiff in the action.

Judgment and damages.

SEC. 36. The plaintiff recovering judgment in ejectment in any of the cases in which such action may be maintained, shall also be entitled to recover damages against the defendant for the rents and profits of the premises recovered.

Suggestion of claim.

SEC. 37. Instead of the action of trespass for *mesne* profits heretofore used, the plaintiff seeking to recover such damages, shall, within one year after the entering of the judgment, make and file a suggestion of such claim, which shall be entered, with the proceedings thereon, upon the record of such judgment, or be attached thereto, as a continuation of the same.

SEC. 38. Such suggestion shall be substantially in the same form as is now in use for a declaration in an action of assumpsit for the use and occupation, as near as may be; and it shall be served on the defendant in the same manner hereinbefore prescribed respecting the service of a declaration in ejectment; and the same rules of pleading thereto shall be observed as upon declarations in personal actions.

Defendant may plead issue of non-assumpsit.

SEC. 39. The defendant may plead the general issue of non-assumpsit, and, under such plea, may give notice of, or may plead specially, any matter in bar of such claim, except such as were or might have been controverted in such action of ejectment; but he may plead or give notice of a recovery by such defendant, or any other person, of the same premises, or of part thereof, subsequent to the verdict in such action of ejectment, in bar or in mitigation of the damages claimed by the plaintiff.

Issue of fact on suggestion.

SEC. 40. If any issue of fact be joined on such suggestion, it shall be tried as in other cases; and if such issue be found for the plaintiff, the same jury shall assess his damages to the amount of the *mesne* profits received by the defendant since he entered into possession of the premises, subject to the restrictions hereinafter contained.

Plaintiff to establish time of possession.

SEC. 41. On the trial of such issue, the plaintiff shall be required to establish, and the defendant may controvert, the time when such defendant entered into the possession of the

premises, the time during which he enjoyed the mesne profits thereof, and the value of such profits; and the record of the recovery in the action of ejectment shall not be evidence of such time. On such trial, the defendant shall have the same right to set off any improvements made on the premises, to the amount of the plaintiff's claim, as is now or shall hereafter be allowed by law; and in estimating the plaintiff's damages, the value of the use by the defendant of any improvements made by him shall not be allowed to the plaintiff.

SEC. 42. If no issue of fact be joined on such suggestion, or if judgment thereon be rendered against the defendant by default, on demurrer or otherwise, a writ of inquiry, to assess the value of such mesne profits, shall be issued, of the execution of which the same notice shall be given to the defendant, or his attorney, as in other cases.

When issue of fact be not joined, writ of inquiry issued.

SEC. 43. Upon the execution of such writ, the plaintiff shall be required to establish the same matters herein before required in the case of an issue being joined, and the defendant may in like manner controvert the same, and make any set-off to which he shall be entitled; and the jury shall assess the damages in the same manner. The same proceedings shall be had on such writ, and it shall be returned as in other cases, with the inquisition taken thereon. Upon such inquisition, or upon the verdict of the jury in the case of the issue being joined, the court shall render judgment, as in actions of assumpsit, for use and occupation, which shall have the like effect in all respects.

SEC. 44. If the plaintiff in ejectment shall have died after issue joined or judgment therein, his personal representatives may enter a suggestion of such death, of the granting letters testamentary or of administration to them, and may suggest their claim to the mesne profits of the premises recovered, in the same manner, and with the like effect, as the deceased; and the same proceedings in all respects shall be had thereon.

In case of death of plff.

SEC. 45. If the action be brought to recover the dower of any widow, which shall not have been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in manner following:

Action for dower.

1. Upon the rendition of judgment, the court, upon the motion of the plaintiff, shall appoint three respectable and disinterested freeholders, commissioners for the purpose of setting off and allotting to the plaintiff her dower out of the lands described in the record; and the commissioners so appointed shall proceed in like manner, possess the like powers, and be subject to the like obligations and control, as commissioners appointed pursuant to the act, entitled "An act for the speedy assignment of the dower, and partition of real estate."

First assignment of dower.

2. Upon the approval of the report of the commissioners

Second.

Approval of report of commissioners. by the court, a writ of possession shall be issued to the sheriff of the proper county, describing the premises assigned for the dower, and commanding the sheriff to put the plaintiff in possession thereof.

Compensation of com'rs. SEC. 46. The commissioners to be appointed under this act shall be allowed, as a compensation for their services, the sum of two dollars per day each, to be taxed as other costs. This act to take effect on the first day of June next; but rights acquired under the laws heretofore in force, relative to the action of ejectment, are not to be affected by this act. All laws contrary to the provisions of this act are hereby repealed.

Laws repealed. SEC. 47. Nothing contained in this act shall be construed as repealing or changing the provisions of the act, entitled "An act concerning occupying claimants of land," approved on the twenty-third day of February, one thousand eight hundred and nineteen; but all the provisions of said act shall be and remain in full force, any thing in this act to the contrary notwithstanding.

Act referred to.

APPROVED, March 2, 1839.

In force, Mar. 2, 1839. AN ACT to amend an act, entitled "An act to create the county of Bureau."

Ad valorem tax in Princeton to be paid into county treasury; how appropriated. SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the president and trustees or other corporate authorities of the town of Princeton are hereby fully authorized and empowered to levy and collect an ad valorem tax upon all the real estate within the corporate limits of said town of Princeton, for the purpose of raising the sum of five thousand dollars; which tax, when collected, shall be paid into the county treasury, to be appropriated in defraying the expenses of erecting public buildings for the county of Bureau: said tax to be levied in any term of years, not exceeding three years, as the corporate authorities of the said town of Princeton may think best.

\$5,000 a full discharge. SEC. 2. When said sum of five thousand dollars shall be collected and paid into the county treasury of the county of Bureau as aforesaid, it shall be a full discharge of all further demands against the owners and proprietors of said town of Princeton, or any person or persons directly or indirectly liable for such owners and proprietors.

On refusal to pay tax. SEC. 3. Should the owner of any real estate lying within the town of Princeton fail or refuse to pay the tax authorized to be levied and collected by this act, and should there be no personal property belonging to the owners of such real estate within the limits of said town of Princeton, then and in that case the collecting officers of said corporation shall report such real estate as may be in arrears to the proper authority