

A. D. 1819.
A. R. C. 43.

What decree may be pronounced.

Such decree to be certified to register, and noted in margin of the patent or grant.

Register's fees for services rendered under this act.

Repealing clause. Proviso.

Commencement.

6. UPON the final hearing of the cause, the court shall decree such letter patent or grant to be repealed, in the whole or in part, or dismiss the plaintiff's bill, as law and equity may require.

7. ANY such final decree repealing such letter patent or grant, either wholly or in part, shall be certified to the register of the land office, and the substance thereof shall be thereupon entered in the margin of the original record of such letter patent or grant; and thereupon such letter patent or grant, for so much thereof as shall have been so repealed, shall be utterly null and void.

8. THE register for the services hereby required of him, shall receive the following fees, viz. : for making a return to the certiorari, the same fee as for a copy of the patent; and for entering the substance of the decree in the margin of the record, twenty-five cents.

9. ALL acts and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed: *Provided however*, That any proceedings instituted before the commencement of this act may be prosecuted in the same manner as if this act had never passed.

10. THIS act shall commence and be in force from and after the passing thereof.

C. 120.

A. D. 1818.
A. R. C. 42.

*An act to reduce into one act the acts now in force, directing the mode of suing out and prosecuting writs of Habeas Corpus, and to annul the remedy by writ de homine replegiando.**

[Passed January 17, 1818.†]

How writ of habeas corpus ad subjiciendum, may be obtained.

31 Car. 2, c. 2, § 3, 10.

1. *Be it enacted by the General Assembly*, That whenever any person detained in custody, whether charged with a criminal offence or not,‡ shall, by himself, or by some other person in his behalf, apply to the general court, or any superior court of law, or superior court of chancery in this Commonwealth, or to any judge thereof, in vacation, for a writ of habeas corpus ad subjiciendum, and shall shew, by affidavit or other evidence, probable cause to believe that he is detained in custody without lawful authority, it shall be the duty of the court or judge to whom such application shall be made, forthwith to grant the writ, signed by himself, directed to the person

* Former general laws touching this subject; May, 1784, c. 35; 1792, edition 1794, 1803 and '14, c. 118; 1814, c. 26.

† Suspended till January 1st, 1820; *vid. ante*, c. 45.

‡ Materially altered by the act of 1814, c. 6, both from the English statute and our own act of 1792, which gave the writ, *unless the commitment were for treason or felony, plainly expressed in the warrant of commitment*, to all prisoners not being convict, or in execution by legal process; and the other provisions of the act of 1814, from which this act is chiefly taken, are far more favorable to the prisoner than the former statutes; and many of them are entirely new.

in whose custody the applicant is detained, and returnable, immediately, before such court or judge, or any of the said courts or judges: *Provided*, That in all cases where it shall appear necessary, the court or judge granting the writ, shall previously require bond, with sufficient security, executed in such manner, and in such reasonable penalty, as such court or judge shall prescribe, conditioned for the payment of such charges as may be awarded against the prisoner, and that he will not escape by the way. Every bond, so executed, shall be recorded with the other proceedings, as herein-after provided for; and may be sued on, in the name of the person to whom it is made payable, for the benefit of any person really interested therein. (a)

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Bond and security may be required of prisoner.

Such bond to be recorded.

How it may be put in suit.

2. **WHENEVER** any such writ shall be served on the officer or other person to whom it is directed, or, in his absence, from the place where the prisoner is confined, on the person having the immediate custody of the prisoner, it shall be the duty of him on whom the writ shall be so executed, without delay, to bring the body of the prisoner, or cause it to be brought before the court or judge before whom the writ is made returnable, or, in case of the absence of such court or judge, before any of them; and, at the same time, to certify the cause of the detainer of such prisoner. (b)

Duty of person in whose custody prisoner is, when such writ shall be served on him.
31 Car. 2, c. 2, § 2.

3. **ANY** person failing to return the writ so served upon him, with the cause of the prisoner's detainer, or to bring the body of the prisoner before the court or judge, according to the command of the writ, for three days after such service, or, when the prisoner is to be brought more than twenty miles, for so many days more as will be equal to one day for every twenty miles of such further distance, shall forfeit and pay to the prisoner the sum of three hundred dollars; the right to recover which shall not cease by the death of either or both of the parties. (c)

Penalty for disobedience.
31 Car. 2, c. 2, § 5.

4. It shall be lawful for a judge, in vacation, to take the same steps to enforce obedience to any writ of *habeas corpus ad subjiciendum*, as may be taken in term-time by any court having jurisdiction over such writs. (d)

Power of judge in vacation to enforce obedience.

5. **THE** court or judge before whom the prisoner shall be brought, shall, without delay, proceed to enquire into the cause of his imprisonment, and shall either discharge him, admit him to bail, or remand him into custody, as the law and the evidence shall require; and shall, moreover, either award against the prisoner the charges of his transportation, not exceeding seventeen cents per mile, and the costs of the proceedings, or shall award costs in his favor, or shall award no costs or charges against either party, as shall seem right. The clerk of the court, in the office of which the proceedings shall be recorded, may issue execution for the costs and charges, so awarded by a judgment rendered in vacation, in the same manner as if the judgment had been rendered in term time. (e)

Duty of court or judge before whom prisoner is brought.
31 Car. 2, c. 2, § 5.
Discretionary power as to costs and charges.

Execution for costs, &c., awarded by judge in vacation, may be issued by clerk of the court.

6. **THE** return made to such writ shall not hereafter be taken to be conclusive as to the facts stated therein; but it shall be

Return made to such writ not to be conclusive; but

(a) 1814, c. 26, § 1.

(b) *Ibid*, § 2.

(c) *Ibid*, § 3.

(d) 1814, c. 26, § 4.

(e) *Ibid*, § 5.

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evidence to contradict it admissible.

Power of judge in vacation to compel attendance of witnesses.

When affidavits may be taken instead of personal attendance.

Proceedings to be entered of record. For that purpose to be signed and certified by judge in vacation.

When required, all material facts proved to be made a part of record. Fee to clerk.

Such fee to be charged to prisoner, and taxed in bill of costs.

Judgment to be conclusive, until reversed.

Second *habeas corpus* for the same cause not to be allowed.

But writ of error, or action for false imprisonment, may lie.

Prisoner, if discharged, not to be afterwards confined for same cause, unless by order of court.

31 Car. 2, c. 2, § 6. Court of appeals may grant writ of error to any party aggrieved by such judgment.

Costs to be awarded at discretion.

Provision in case any person, held in service of this State, or of the U. States, shall be discharged.

competent for the judge or court, before whom such return is made, to receive evidence in contradiction thereof, and to determine the same, as the very truth of the case shall require. (f)

7. IN vacation, a judge shall have the same power to compel the attendance of a witness, to give evidence upon the trial, as a court would have in term-time; and whenever, either in term-time or in vacation, it shall be inconvenient to procure the personal attendance of a witness, his affidavit, taken upon reasonable notice to the adverse party, may be received in evidence. (g)

8. THE proceedings and judgment shall, in all cases, be entered of record. If they be had in vacation, before a judge in chancery, they shall be signed by the judge, certified to the clerk, and by him entered among the records of the chancery court, within the jurisdiction of which the judgment shall be rendered: if before a judge of the general court in vacation, they shall be in like manner signed, certified and entered among the records of the superior court of law for the county in which the judgment shall be rendered. Whenever either party shall require it, upon the trial, the court or judge shall cause to be made a part of the record all the material facts proved. The clerk shall be allowed the same fee for entering the record, as is allowed by law for copying a record, of the same number of words; which fee shall be charged to the prisoner, and taxed in the bill of costs, when costs are recovered by him. (h)

9. THE judgment so entered of record shall be conclusive, until reversed in the manner herein provided for; and no person remanded by such judgment, whilst the same continue in force, shall be at liberty to obtain another *habeas corpus*, for the same cause, or, by any other proceeding, to bring the same matter again in question, except by writ of error or by action of false imprisonment; nor shall any person, who shall hereafter be discharged from confinement by such judgment, be afterwards imprisoned or confined for the same cause, unless by the order or judgment of a court of competent jurisdiction. (i)

10. If any party to such judgment shall feel himself aggrieved thereby, it shall be lawful for the court of appeals, on his motion, to grant a writ of error; and, upon the trial, to reverse or affirm the judgment, wholly or in part; and to cause such other judgment to be entered, and such other proceedings to be had, as the law and the right of the case may require; either awarding costs or not, at their discretion. (k)

11. If, by any judgment entered as aforesaid, any person held in service of this State, or of the United States, shall be discharged, it shall be lawful for the attorney-general, on behalf of the Commonwealth, or for any attorney, duly authorised, on behalf of the United States, to obtain from the court of appeals a writ of error to such judgment, and to cause the same to be reversed and otherwise proceeded on, in the same

(f) 1814, c. 26, § 6.

(g) *Ibid*, § 7.

(h) *Ibid*, § 8.

(i) 1814, c. 26, § 9.

(k) *Ibid*, § 10.

manner as is allowed to the parties thereto. And, if, at any time during the recess of the court of appeals, the Executive of this Commonwealth should think that the public interest requires the immediate revision of such judgment, it shall be lawful for them to convene the said court, on any day which to them shall seem proper.^(l)

12. THE trial of all writs of error to judgments in case of *habeas corpus*, shall have preference, in the court of appeals, to all other trials.^(m)

13. THE remedy by writ *de homine replegiando*, shall be, and the same is hereby annulled.⁽ⁿ⁾

14. A CITIZEN of this Commonwealth, committed to prison in custody of any officer, for any criminal matter, shall not be removed from thence, into the custody of another officer, unless it be by *habeas corpus*, or some other legal writ, or where the prisoner shall be delivered to the constable, or other inferior officer, to be carried to some common jail, or shall be sent, by warrant of an overseer of the poor, to some common work-house, or shall be removed from one place to another within the same county, in order to his discharge or trial in due course of law, or in case of sudden fire or infection, or other necessity; or where the prisoner shall be charged, by affidavit, with treason, felony or other crime, alleged to be done in any other of the United States of America; in which last case, he shall, on demand of the Executive authority of the State from which he fled, be sent thither in custody, by order of the general court, or by warrant of any two judges thereof in vacation time, or may be bound by recognizance with sureties, before them, to appear there, whatsoever shall seem most proper, if the said court or judges, upon consideration of the matter, shall think he ought to be put upon his trial.^(o)

15. ALL and every act and acts, clause and clauses of acts, coming within the purview of this act, shall be and the same are hereby repealed; saving to all persons all rights and remedies which may have accrued under them.

16. THIS act shall commence and be in force from and after Commencement the first day of January, eighteen hundred and nineteen.

A. D. 1818.
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Executive may convene court of appeals, for purpose of revising such judgments.

Writs of error to judgments in cases of *habeas corpus*, to be tried out of turn.

Writ *de homine replegiando* annulled.

Citizen imprisoned for any criminal matter not to be removed into custody of another officer, but by *habeas corpus*, or some other legal writ;

Except in certain specified cases.

32 Car. 2, c. 2, § 9.

How prisoner charged with felony, alleged to have been committed in another State, may be sent thither for trial.

Repealing clause.

C. 121.

An act authorising certain proceedings on the Writ of Mandamus.*

A. D. 1799.
A. R. C. 23.

[Passed January 22, 1799.]

WHEREAS great difficulty and delay attends the present method of proceeding on writs of mandamus, and it is proper that

(l) 1814, c. 26, § 11.

(m) *Ibid.*, § 12.

(n) *Ibid.*, § 13.

(o) 1792, edition 1794, 1808 and '14,

c. 118, § 7.

* 1798, c. 23; edi. 1803, and '14, c. 253.