STATUTE I.
Feb. 20, 1812.

CHAP. XXIV.—*An act authorizing the Secretary of the Treasury to locate the Lands reserved for the use of Jefferson College, in the Mississippi territory.*

[Obsolete.]
The Secretary of the Treasury to locate in one body the thirty-six sections of land reserved for Jefferson College by the act of March 3, 1803, sec. 12.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby authorized and empowered to locate in one body, the thirty-six sections of land reserved for the use of Jefferson college in the Mississippi territory, by an act, entituled "An act regulating the grants of land, and providing for the sale of the lands of the United States south of the state of Tennessee," passed on the third day of March, one thousand eight hundred and three, on any lands within the said territory not sold, or otherwise disposed of, and to which the Indian title has been extinguished.

APPROVED, February 20, 1812.

STATUTE I.
Feb. 20, 1812.

CHAP. XXV.—*An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States.*(a)

Act of March 1, 1817, ch. 30.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the

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(a) The decisions of the Courts of the United States upon the law of Bail have been:

Bail in Criminal Cases.—The circuit court has no authority to issue a *habeas corpus* for the purpose of surrendering a principal in discharge of his bail, when the principal is confined in jail merely under the process of a state court; nor will the court discharge the bail of such party, who has become bound by recognizance in the circuit court to answer, &c., merely on account of such impediment; but, in their discretion, the court will respite the recognizance. U. S. *v.* Jonathan French, 1 Gallis. C. C. R. 1.

The mere continuance of a cause, on sufficient grounds exhibited by the district attorney, constitutes no reason why the court should admit a defendant who is in confinement, to bail. But if the court is satisfied that the health of the accused is such as that his life will be endangered by his being kept in confinement until next term, it furnishes a strong ground for bail. The U. S. *v.* Jones, 3 Wash. C. C. R. 209.

Probable cause, on oath, must be stated, to justify the holding a defendant to bail under the 3d sec. of the act of Congress of 26th Feb. 1795, ch. 31. Leonard *v.* Caskin, Bee's Adm. Decis. 146.

Aaron Burr, charged with carrying on a military expedition against a nation with whom the United States were at peace, was admitted to bail. 1 Burr's Trial, 18.

The postponement of a criminal case, on the application of the defendant, to allow him an opportunity to obtain testimony, is not a cause of bail. The U. S. *v.* Stewart. C. C. U. S. of Pennsylvania, 2 Dall. 345.

The circumstances must be very strong, which will, at any time, induce the court to admit a person to bail who stands charged with high treason. *Ibid.*

The supreme court of the United States has jurisdiction, under the constitution and laws of the United States, to bail a person committed for trial on a criminal charge, by a district judge of the United States. U. S. *v.* Hamilton, 3 Dall. 13.

The marshal of the United States of the Connecticut district, upon a writ of attachment sued out by the United States, to recover a penalty, may commit a defendant to prison for want of bail, without a mittimus from a state magistrate, as is required by the local laws of the state; for such municipal regulation does not bind the officers of the United States. Palmer *v.* Allen, 7 Cranch, 560; 2 Cond. Rep. 607.

Bail in Civil Cases.—The bail is fixed by the death of the principal, after the return of a capias ad satisfaciendum, and before the return of the scire facias; and the bail is not entitled to an exoneretur in such a case. Davidson *v.* Taylor, 12 Wheat. 604; 6 Cond. Rep. 660.

Demanding excessive bail, where the plaintiff has a good cause of action, or holding to bail where there is no cause of action, if done vexatiously, entitles the party injured to an action for a malicious prosecution. If bail be not demanded, no such action will lie. Ray *v.* Law, Peters' C. C. R. 207.

Pennsylvania. The circuit court will discharge, on common bail, a defendant who has been arrested for a debt contracted in the state in which he has, subsequent to the commencement of the suit, been discharged by the insolvent laws of the state. Read *v.* Chapman, Peters' C. C. R. 404.

Pennsylvania. Where a capias has been issued against a person who has been discharged from the debt for which it was issued, by the insolvent laws of the state in which it was contracted, the court will not quash the writ, but will discharge the defendant on common bail. *Ibid.*

On a rule to show cause why the defendant should not be discharged on common bail, he having been discharged under the insolvent laws of Pennsylvania; evidence to show that the discharge had been fraudulently obtained, cannot be given. Campbell et al. *v.* Claudius, Peters' C. C. R. 484.

Pennsylvania. Where the debt has been contracted and made payable out of the state, the circuit court will not discharge, on common bail, a defendant arrested for such debt, notwithstanding his discharge by the insolvent laws of the state in which the action was brought. *Ibid.*

After bail given, and plea pleaded, the defendant cannot arrest the judgment on the ground of a misnomer. Scull *v.* Briddle, 2 Wash. C. C. R. 200.

The proceedings were amended by the recognizance of bail, and the name of the defendant in the recognizance was inserted in the declaration. *Ibid.*

The court are not precluded from obtaining further satisfaction as to the debt sworn to in an affidavit to

Commissioners to be appointed by the circuit courts of the U. States,

circuit court of the United States, to be holden in any district in which the present provision, by law, for taking bail and affidavits in civil causes, (in cases where such affidavits are, by law, admissible) is inadequate, or on account of the extent of such district, inconvenient, to appoint such

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hold to bail, because the affidavit is positive; but the necessity to examine the party who makes the affidavit, must be presented on the face of the same. Oliver *v.* Parish, 2 Wash. C. C. R. 462.

New York. Under the act of Congress of 6th January, 1800, the sheriff of a county is bound to take a bond for the limits, as provided by the state laws, from a prisoner confined on process from the courts of the United States; and false imprisonment would lie on his refusal. United States *v.* Noah, Paine's C. C. R. 368.

New York. Such a bond has, in all respects, the same incidents, and the like legal effects with a bond taken under the state laws. *Ibid.*

New York. It is assignable: and an assignment discharges the sheriff from a liability for a subsequent escape. *Ibid.*

New York. The United States are expressly named in the act, and bound by it; and an assignment of a bond to them when they are plaintiffs, is valid. *Ibid.*

New York. The Secretary of the Treasury having accepted such an assignment, the court presumed that he was authorized, and held the plaintiffs bound by his acceptance. *Ibid.*

New York. The term "process," in the act, includes executions, as well as mesne process. *Ibid.*

New York. After a prisoner has been enlarged upon a limit bond, the sheriff can confine him again only on the bail's becoming insufficient. He cannot accept a surrender of him; certainly not after an assignment of the bond. *Ibid.*

Pennsylvania. The bail to the sheriff entered special bail; on being excepted to, he refused to justify, whereupon he was sued on the bail bond, and he surrendered the principal before the return of the writ. Held, that the surrender was good, and the bail was entitled to relief on the usual terms. Stockton *v.* Throgmorton, 1 Baldwin's C. C. R. 148.

No justification of bail is necessary, when special bail is entered for the purpose of a surrender. *Ibid.*

Bail may take the principal on a Sunday, or in another state. Johnson *v.* Tomkins, 1 Baldwin's C. C. R. 577.

If the defendant be discharged under an insolvent law of the state where the contract is made, after the bail bond has been assigned to the plaintiff, the court will not order an exoneretur to be entered on the bail piece. Bosbyshell *v.* Oppenheimer, 4 Wash. C. C. R. 317.

By the Pennsylvania practice, filing the declaration before the return of the writ, is not a waiver of the bail. The English rule is otherwise, unless the declaration be filed de bene esse. *Ibid.*

The undertaking of the appearance bail can be no otherwise fulfilled, than by the defendant giving special bail, if so ruled; and that bail justifying, if excepted to. *Ibid.*

If, instead of ruling the marshal to bring in the body of the defendant, the plaintiff accept an assignment of the bail bond, and bring a suit thereon, still the court will not fix the appearance bail, if certain terms are complied with; one of which is the defendant's entering special bail. *Ibid.*

On a rule on the plaintiff to show his cause of action, who thereupon filed a positive affidavit of the debt, the court will not order the party making the affidavit, to be examined on oath in court; no ground appearing to the court to justify a suspicion that the debt was not due. Champion *v.* Ross, 4 Wash. C. C. R. 325.

The court will not relieve the appearance bail, upon his delivering the principal in court, unless he put in and perfect special bail. Bosbyshell *v.* Oppenheimer, 4 Wash. C. C. R. 317.

Although the special bail may deliver up the principal at any time before the second scire facias, it does not follow that the appearance bail may do it. Their engagements are of a different nature. *Ibid.*

Where the defendant is discharged under the insolvent law of the state where the debt was contracted, and has given special bail, the court will order an exoneretur to be entered on the bail piece. Richardson *v.* M'Intyre, 4 Wash. C. C. R. 412.

If the special bail surrender the principal, who has been discharged under an insolvent law, the court will discharge the principal from custody. *Ibid.*

Under the act of assembly of Virginia, the defendant may enter special bail, and defend the suit at any time before the entering up of judgment, upon a writ of inquiry executed; and the appearance of the defendant, or the entry of special bail, before such judgment, discharges the appearance bail. Bartle *v.* Coleman, 6 Wheat. 475; 5 Cond. Rep. 142.

If the defendant does not appear, or give special bail, the appearance bail may defend the suit, and is liable to the same judgment as the defendant would have been liable to; but the defendant cannot appear and consent to a reference, the report and judgment on which is to bind the appearance bail as well as himself. Such a joint judgment is erroneous, and will be reversed as to both. *Ibid.*

District of Columbia. The bail is fixed by the death of the principal after the return of the ca. sa. and before the return of the scire facias; and the bail is not entitled to an exoneretur in such a case. Davidson *v.* Taylor, 12 Wheat. 604; 6 Cond. Rep. 660.

Ohio. The recognizance of special bail being a part of the proceedings in a suit, and subject to the regulation of the court, the nature, extent, and limitations of the responsibility created thereby, are to be decided, not by a mere examination of the terms of the instrument, but by a reference to the known rules of the court, and the principles of law applicable thereto. Whatever, in the sense of these rules and principles, will constitute a discharge of the liability of the special bail, must be deemed included within the purview of the instrument, as much as if it were expressly stated. Beers et al. *v.* Haughton, 9 Peters, 329.

By the rules of the circuit court of Ohio, adopted as early as January, 1808, the liability of special bail was provided for and limited; and it was declared, that special bail may surrender their principal at any time before or after judgment against the principal, provided such surrender shall be before a return of a scire facias executed, or a second scire facias returned "nihil" against the bail. And this, in fact, constituted a part of the law of Ohio, at the time the present recognizance was given; the same having been so enacted by the legislature. This act of the legislature of Ohio, was in force at the time of the passage of the act of Congress of the 19th of May, 1828, regulating the process of the courts of the

and so many discreet persons, in different parts of the district, as such court shall deem necessary, to take acknowledgments of bail and affidavits; which acknowledgments of bail and affidavits shall have the like force and effect as if taken before any judge of said court; and any per-

for taking bail and affidavits, and the acknowledgments so taken to have

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United States, in the new states; and must therefore be deemed as a part of the "modes of proceeding in suits," and to have been adopted by it: so that the surrender of the principal within the time thus prescribed, is not a mere matter of favour of the court, but is strictly a matter of legal right. *Ibid.*

It is not strictly true, that on the return of "non est inventus" to a capias ad satisfaciendum against the principal, the bail is "fixed," in courts acting professedly under the common law, and independently of statute. So much are the proceedings against bail deemed a matter subject to the regulation and practice of the court, that the court will not hesitate to relieve them in a summary manner, and direct an exoneretur to be entered in cases by the indulgence of the court, by giving them time to render the principal until the appearance day of the last scire facias against them, as in cases of strict right. *Ibid.*

When bail is entitled to be discharged, ex debito justitiæ, they may not only apply for an exoneretur by way of summary proceeding, but they may plead the matter as a bar to the suit, in their defence. But when the discharge is matter of indulgence only, the application is to the discretion of the court; and an exoneretur cannot be insisted on, except by way of motion. *Ibid.*

When the party is, by the practice of the court, entitled to an exoneretur without a positive surrender of the principal, according to the terms of the recognizance; he is, a fortiori, entitled to insist on it by way of defence, when he is entitled, ex debito justitiæ, to surrender the principal. *Ibid.*

The doctrine is fully established, that where the principal would be clearly entitled to an immediate and unconditional discharge, if he had been surrendered, there the bail are entitled to relief by entering an exoneretur without any surrender. And, a fortiori, this doctrine will apply, when the law prohibits the party from being imprisoned at all, and where by the positive operation of law the surrender is prevented. *Ibid.*

Where the defendants in a judgment are not liable to be imprisoned, having been released under the insolvent laws of a state, the special bail is not bound to surrender them in his discharge. Beers et al. *v.* Haughton, 1 M'Lean's C. C. R. 231.

To an action on the recognizance of bail, he may plead the discharge of his principal. *Ibid.*

To hold to bail under the statute of Illinois, the affidavit must state more than the belief of the assent, or the legal import of the action on which it is founded. Wright et al. *v.* Cayswell, 1 M'Lean's C. C. R. 471.

The act of 20th February, 1839, which adopted the state laws, in regard to imprisonment of debtors, took immediate effect, as well in suits pending, as in other cases. Gray, Sherwood & Co. *v.* Monroe et al., 1 M'Lean's C. C. R. 528.

The law relates to the remedy, and under it, when appearance bail has been given, the defendant may, on motion, be discharged on common bail. *Ibid.*

Bail in Admiralty, and in Prize Causes.—Where the court of admiralty has parted with the possession of the property upon bail or stipulation, and it is necessary for the purposes of justice to retake the property into the custody of the court, the proper process against any person not a party to the stipulation, but who is alleged to have the actual or constructive possession, is a monition, and not an execution in the first instance. The Gran Para, 10 Wheat. 497; 6 Cond. Rep. 199.

Wherever a stipulation is taken in an admiralty suit for property subjected to legal process and condemnation, the stipulation is deemed a mere substitute for the thing itself; and the stipulators are liable to the exercise of all those authorities on the part of the court, which it could properly exercise if the thing was in custody. The Palmyra, 12 Wheat. 1; 6 Cond. Rep. 397.

Regularly there should be no delivery of prize property on bail, until after a hearing of the cause, and in most cases a sale is preferable to an appraisement. The George, 2 Gallis. C. C. R. 249.

Proceedings by libel were instituted upon a seizure of goods, and a bond given for their appraised value on the delivery of the goods to the claimant. Afterwards the libel was by amendment changed to an information, and the goods were condemned. On an application for an attachment against the obligors in the bond, it was held that although the case was not regularly within the 89th section of the collection law, yet a compliance with the stipulations in the bond might be enforced by attachment against the obligors. United States *v.* Four Part Pieces of Woollen Cloth, 1 Paine, 435.

And the court held that it made no difference that the obligors were only sureties, and had not themselves received the goods. *Ibid.*

If the claimant is not a party on the bond, all the obligors are to be deemed principals. *Ibid.*

The bond was taken in the district court of New York, and under the statute dividing the district, the proceedings were transferred to the district court of the northern district, and by a subsequent statute to this court, where the condemnation took place. The condition of the bond was to pay the appraised value of the goods into the district court, if they should be condemned in that court. Held, that a condemnation in this court had the same effect to forfeit the bond. *Ibid.*

In prize causes, before a hearing, the property is never delivered on bail, unless by consent. If it is perishable, the proper remedy is by an appraisement and sale; and in like manner the court will decree a sale, pending the proceedings, for any other justifiable cause. After a hearing, the property may, in the discretion of the court, be delivered on bail. In cases ordered for further proof, a delivery on bail is sometimes allowed, to the claimants; and if they decline, to the captors. But it is a proceeding adopted with extreme caution, as it opens a door to many inconveniences, and sometimes to frauds. In no case should a delivery on bail take place, until the court is fully satisfied that the appraisement is perfectly fair, and the property estimated at its full value. The ship Euphrates, 1 Gallis. C. C. R. 451.

Where, on the hearing, the property is acquitted, and an appeal is interposed to a tribunal not sitting within the same jurisdiction; or into which the property does not follow the cause, (as an appeal to the supreme court of the United States,) the claimants are generally allowed a delivery of the property, or in a case of sale of the proceeds on bail. Where there is a decree of condemnation, the same rule is generally adopted, as to the captors. But it is always an application to the sound discretion of the court; and

the same effect as if taken before any judge of said court.

son swearing falsely in and by any such affidavit, shall be liable to the same punishment as if the same affidavit had been made or taken before a judge of said court.

Fees for taking them.

Sec. 2. *And be it further enacted,* That the like fees shall be allowed for taking such bail and affidavit as are allowed for the like services by the laws of the state, in which any such affidavit or bail shall be taken.

Discretionary power to courts of U. States, in cases of depositions in perpetuam rei memoriam.

Sec. 3. *And be it further enacted,* That in any cause before a court of the United States, it shall be lawful for such court, in its discretion, to admit in evidence any deposition taken in perpetuam rei memoriam, which would be so admissible in a court of the state wherein such cause is pending according to the laws thereof.

Approved, February 20, 1812.

Statute I.

Feb. 21, 1812.

[Obsolete.]

Chap. XXVI.—*An Act making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and twelve.*

Appropriation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for defraying the expenses of the military establishment of the United States for the year one thousand eight hundred and twelve, for the Indian department, and for the expense of fortifications, magazines, arsenals and armories, the following sums, including the sum of one million five hundred thousand dollars already appropriated by the first section of the act, entituled "An act authorizing the purchase of ordnance and ordnance stores, camp equipage and other quartermaster's stores and small arms," be, and the same hereby are respectively appropriated; that is to say:

1812, ch. 16.

Specific appropriations.

For the pay of the army of the United States, eight hundred and sixty-nine thousand nine hundred and sixty-eight dollars.

For forage, one hundred and four thousand six hundred and twenty four dollars.

For subsistence, six hundred and eighty-five thousand five hundred and thirty-two dollars and five cents.

For clothing, two hundred and ninety-three thousand eight hundred and four dollars.

For bounties and premiums, seventy thousand dollars.

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if there be danger of injustice, the court will withhold it from either party, and content itself with retaining the property, or with ordering a sale thereof, and a deposit of the proceeds in the registry. *Ibid.* 452.

If a bond, taken on the delivery of property on bail, be void, as not conforming to law, the court will enforce a re-delivery of the property by attachment. The Struggle, 1 Gallis. C. C. R. 476.

A bond voluntarily given upon the delivery of property on bail, on application of the claimant, is good; although the condition does not exactly conform to the act of Congress, under which it may have been intended to take it. *Ibid.*

The act of Congress of 2d March, 1799, chap. 22, is not understood as compulsory on the court as to the delivery on bail. It still rests in the discretion of the court. *Ibid.* 477.

The district courts of the United States have no authority, after an appeal, to bail or sell property. The Grotius, 1 Gallis. C. C. R. 503.

Whether the security for property, delivered on bail, be by bond or stipulation, is immaterial. On such security, a summary judgment may be entered for the appraised value, and for the costs. The Alligator, 1 Gallis. C. C. R. 145.

The district court, by virtue of its general admiralty jurisdiction, may deliver property on bail; and the form in which the security is taken is immaterial: on such security a summary judgment may be rendered to the appraised value. The Lively, 1 Gallis. C. C. R. 315.

It is the duty of commissioners to whom it is referred to estimate damages, to make their report as specific as the nature of the thing will admit; so that not only the result, but the detail of their judgment should appear. *Ibid.*

In cases of restitution with damages, in prize proceedings, if in order to ascertain the damages, an inspection or a sale of the cargo be, in the judgment of the commissioner or the parties, necessary; application should be made to the court for an order of unlivery and appraisement, or for a sale, as the case may require. *Ibid.*

No delivery of property on bail, in a prize cause, can be made legally, where the United States are parties, without due notice to the district attorney. Ex parte Robbins, 2 Gallis. C. C. R. 320.

If the cargo is liable to deteriorate or perish, or the ship to be injured by the delay incident to the salvage proceedings, the proper course is to apply to the court for a sale thereof. It is not a matter of right of either party to have a delivery on bail in such cases. The Ship Nathaniel Hooper, 3 Sumner's C. C. R. 542.