

or sentence of divorce from bed and board, the court may, on the petition of the husband setting forth and accompanied by legal proof of such adultery, deprive the wife of alimony from the date of her said criminal act, and rescind her right of dower, as well as dispossess her, if the court judge fit, of the care, custody, and guardianship of any child which, under the original judgment of the court in granting the divorce, may have been assigned to her.

after divorce from bed and board.  
19 June, 1860, c. 158, s. 12, v. 12, p. 60.

## CHAPTER TWENTY-THREE.

### THE JUDICIARY.

Sec.

- 750. Supreme court.
- 751. Salaries of the justices.
- 752. Oath of office.
- 753. General and special terms.
- 754. Justices holding terms.
- 755. When terms may be held.
- 756. Number of terms required to be held annually.
- 757. Designation of justice to hold special term.
- 758. Special term as district court.
- 759. Special term as criminal court.
- 760. Jurisdiction as a circuit court.
- 761. Power of justices.
- 762. Jurisdiction as a district court.
- 763. As a criminal court.
- 764. Jurisdiction under copyright and patent laws.
- 765. Jurisdiction as a court of bankruptcy.
- 766. In divorce cases.
- 767. Original actions limited to the District, except.
- 768. Common law and chancery causes.
- 769. Amount required to give jurisdiction.
- 770. Rules.
- 771. Justices may administer oaths to United States officers.
- 772. Appeals from special to general term.
- 773. Appeals from police court.
- 774. Appeals from justices of the peace.
- 775. Summary hearing, when.
- 776. Trial by jury at election of parties.
- 777. When appellee fails to appear.
- 778. When appellant fails to prosecute.
- 779. When appeal shall not be dismissed.
- 780. Appeals from Commissioner of Patents.
- 781. Tests of writs.
- 782. Writs of attachment and garnishment.
- 783. How may be quashed.
- 784. Discharge of attached property.
- 785. Sale of attached property.
- 786. Final judgment.
- 787. Notice by publication.
- 788. Order of publication.
- 789. Form.
- 790. Process against foreign corporations.
- 791. No person to be held to bail on action of debt or contract.
- 792. Validity of sales in certain cases.
- 793. Decree confirming sale.
- 794. Capias ad satisfaciendum.

Sec.

- 795. Proceedings upon arrest.
- 796. Exemptions from arrest on civil process.
- 797. Exemptions of property from distraint, &c.
- 798. Conveyance of exempted articles.
- 799. Prior deeds.
- 800. Motions and suits at special terms.
- 801. Issues of fact, how triable.
- 802. Issues at law, how tried.
- 803. Exceptions.
- 804. New trials.
- 805. Appeal to general term.
- 806. Motion for new trial to be held at general term.
- 807. Trials when another term intervenes.
- 808. Proceedings to enforce a lien.
- 809. Fictions in pleadings abolished.
- 810. Set-offs.
- 811. Form of plea set-off.
- 812. Judgment for balance due.
- 813. Mutual judgments.
- 814. Replevin; form of declaration.
- 815. Plaintiff's affidavit to state what.
- 816. Plaintiff to give security.
- 817. Officer's return; proceedings.
- 818. When defendant cannot be found; order and notice.
- 819. Proceedings in default.
- 820. Appearance of plaintiff; plea.
- 821. Plaintiff's damages.
- 822. When judgment is for defendant.
- 823. Damages when things cloigned.
- 824. Judgment; damages for detention.
- 825. Judgment by default in suits on open account.
- 826. Verification of authority of officer taking affidavit.
- 827. Where money is payable by joint obligors; proceedings.
- 828. Plaintiff not entitled to costs, when.
- 829. Interest on judgments.
- 830. Injunction upon judgments; damages on dissolution.
- 831. Damages for satisfaction of interest in case of a forthcoming bond.
- 832. When the court may direct none or partial damages.
- 833. Petition for change of name.
- 834. Notice.
- 835. Name changed.
- 836. Form of indictments.
- 837. Recovery and distribution of certain fines.
- 838. Peremptory challenge of jurors.

Sec.  
839. Witnesses for defendant in criminal trials.  
840. Special oath to grand jury.  
841. Special charge to grand jury.  
842. Libels; truth may be given in evidence.  
843. Fugitives from justice.  
844. Remission of forfeitures by the President.

Sec.  
845. When execution of sentence may be postponed.  
846. Writs of error and appeals.  
847. Amount required for removal.  
848. Removals for less amount in particular cases.  
849. Effect of writ in such cases.  
850. No supersedeas, except, &c.

## SUPREME COURT—ORGANIZATION.

## Supreme court.

3 March, 1863, c. 91, s. 1, v. 12, p. 763.  
21 June, 1870, c. 141, s. 2, v. 16, p. 160.

## Salaries of justices.

1 June, 1866, c. 103, s. 2, v. 14, p. 55.  
3 March, 1863, c. 91, s. 15, v. 12, p. 764.

## Oath.

Ibid., s. 1, p. 763.

SEC. 750. There shall be a supreme court of the District, which shall consist of a chief justice and four associate justices, who shall severally be appointed by the President, by and with the advice and consent of the Senate, and shall hold their offices during good behavior. [Sec § 89.]

161. Noerr *et al.*, administrators, *vs.* Brewer, Wash. Law Rep., No. 46, p. 310.

SEC. 751. The chief justice shall receive an annual salary of four thousand five hundred dollars, and the associate justices an annual salary of four thousand dollars each, payable quarterly at the Treasury of the United States.

SEC. 752. Each justice, before he enters upon the duties of his office, shall take the oath prescribed to be taken by judges of the courts of the United States. [Sec R. S. U. S., § 712.]

## TERMS.

## General and special terms.

21 June, 1870, c. 141, s. 1, v. 16, p. 160.

## Justices holding terms.

3 March, 1863, c.

## When terms may be held.

7 Feb., 1857, c. 37, v. 11, p. 158.

3 March, 1863, c. 91, s. 3, v. 12, p. 763.

## Number of terms required to be held annually.

7 Feb., 1857, c.

## Designation of justice to hold special term.

3 March, 1863, c. 372; United States

## Special term as district court.

11 May, 1820, c. 93, s. 2, v. 3, p. 576.

## Special term as criminal court.

1 March, 1845, c. 35, s. 2, v. 5, p. 729.

SEC. 753. The several general terms and special terms of the circuit courts, district courts, and criminal courts authorized by law, are declared to be, severally, terms of the supreme court of the District of Columbia; and the judgments, decrees, sentences, orders, proceedings, and acts of the general terms, special terms, circuit courts, district courts, and criminal courts rendered, made, or had, are and shall be deemed judgments, decrees, sentences, orders, proceedings, and acts of the supreme court; but nothing contained in this section shall affect the right of appeal as provided by law.

SEC. 754. Any three of the justices of the supreme court may hold a general term, and any one of them may hold a special term.

SEC. 755. The supreme court shall have power, by rule of court, to regulate the periods of holding its terms, as also the periods of the special terms, at which issues of fact triable by a jury or by the court are to be tried, and to fix the number of such terms, and to alter the same from time to time as public convenience may require.

SEC. 756. At least three terms of the supreme court shall be held annually.

37, v. 11, p. 158.

SEC. 757. The special terms shall be held by one of the justices of the supreme court at such time as the court in general term shall appoint.

91, s. 5, v. 12, p. 763. 4 Cranch, C. C., 337; United States *vs.* Williams, 4 Cranch, C. C., *vs.* Milburn, 4 Cranch, C. C., 552.

SEC. 758. The special term held as the United States district court for the District of Columbia shall be holden on the first Mondays in December and June in every year.

SEC. 759. The special term held as the criminal court shall be holden on the first Monday in March, the third Monday in June, and the first Monday in December, in each year. [Sec R. S. U. S., § 811.]

*Ex parte* Bradley, 7 Wall., 364.

JURISDICTION—ORIGINAL.

**SEC. 760.** The supreme court shall possess the same powers and exercise the same jurisdiction as the circuit courts of the United States. Jurisdiction of the supreme court as a circuit court.

[See R. S. U. S., § 605, et seq.]

27 Feb., 1801, c. 15, v. 2, p. 105; 3 March, 1863, c. 91, s. 3, v. 12, p. 763. *United States vs. Heinegan*, 1 Cranch, C. C., 50; *Mechanics' Bank of Alexandria vs. Withers*, 6 Wheat., 106; *McKenna vs. Fiske*, 17 Peters, 245; same case, 1 Howard, 241; *United States vs. Tarlton*, 4 Cranch, C. C., 682; *Kendall vs. United States*, 12 Peters, 524; *Docatur vs. Paulding*, 14 Peters, 497; *Berry's Petition*, 2 Cranch, C. C., 13; *Custis vs. Alexandria and Georgetown Turnpike Company*, 6 Cranch, 233; *Thompson vs. Tolmie*, 2 Peters, 157; *Cannon vs. Davis*, 1 Cranch, C. C., 457; *United States vs. Wright*, 1 Cranch, C. C., 123; *Hard vs. Stone*, 5 Cranch, C. C., 503; *United States vs. Jack*, 1 Cranch, C. C., 44; *United States vs. Louder*, 1 Cranch, C. C., 103; *Ex parte Magruder*, Am. Law Reg., vol. vi, N. S., p. 292; *Bradley vs. Fisher*, 13 Wall., 336; *Cathcart vs. Robinson*, 5 Peters, 264; *Ex parte Watkins*, 7 Peters, 568; *Rutter vs. Merchant*, 1 Cranch, C. C., 36; *Ridgway vs. Pancost*, 1 Cranch, C. C., 88; *United States vs. Porter*, 2 Cranch, C. C., 60; *Ex parte Levi S. Burr*, 2 Cranch, C. C., 379; same case, 9 Wheaton, 529; *United States vs. Williams*, 4 Cranch, C. C., 372; *United States ex rel. Stokes vs. Kendall*, 5 Cranch, C. C., 163.

**SEC. 761.** The justices of the supreme court shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of circuit courts. Power of justices.

*Ibid.*

*Van Ness vs. Bank of United States*, 13 Peters, 17; *Voss vs. Luke*, 1 Cranch, C. C., 331; *Woods vs. Young*, 1 Cranch, C. C., 346; *Parks, administrator, vs. Willis*, 1 Cranch, C. C., 357; *Lewis vs. Mandeville*, 1 Cranch, C. C., 360; *Pierce vs. Turner*, 1 Cranch, C. C., 433; *Barnes vs. Lee*, 1 Cranch, C. C., 471; *Georgetown T. R. Co. vs. Custis*, 1 Cranch, C. C., 585.

**SEC. 762.** Any one of the justices may hold a special term, with the same powers and jurisdiction possessed and exercised by district courts of the United States. Jurisdiction as a district court.

*Ibid.*

**SEC. 763.** Any one of the justices may hold a criminal court for the trial of all crimes and offenses arising within the District. As a criminal court.

*Ibid.*

**SEC. 764.** The supreme court has jurisdiction of actions, suits, controversies, and cases, as well in equity as at law, arising under the copyright and patent-laws, and for damages for the infringement of any patent, by action on the case, in accordance with the provisions of sections forty-nine hundred and nineteen, forty-nine hundred and twenty, and forty-nine hundred and twenty-one, of chapter one, Title LX, of the Revised Statutes, "PATENTS, TRADE-MARKS, AND COPYRIGHTS."

*Ibid.*  
Jurisdiction under copyright and patent-laws.

8 July, 1870, c. 230, ss. 55, 56, 59, 106, v. 16, pp. 206, 207, 215.

[See R. S. U. S., p. 960. See R. S. U. S., § 699.]

*King vs. Force*, 2 Cranch, C. C., 208; *Turner vs. Johnson*, 2 Cranch, C. C., 287.

**SEC. 765.** All the jurisdiction, power, and authority conferred upon and vested in the district courts of the United States by Title LXI "BANKRUPTCY," of the Revised Statutes, are conferred upon and vested in the supreme court when the bankrupt resides in the district. Jurisdiction as a court of bankruptcy.

*Ibid.*

2 March, 1867, c. 177, s. 49, v. 14, p. 541.

**SEC. 766.** The supreme court shall have jurisdiction of all applications for divorce. In divorce cases.

*Ibid.*

19 June, 1860, c. 158, s. 1, v. 12, p. 59.

**SEC. 767.** No action or suit shall be brought in the supreme court by original process against any person who shall not be an inhabitant of, or found within, the District, except as otherwise specially provided. Original actions limited to District, except.

*Ibid.*

27 Feb., 1801, c. 15, s. 6, v. 2, p. 106. *Vasse vs. Comegyss*, 2 Cranch, C. C., 564; *Vaughan vs. Northup*, 5 Cranch, C. C., 496.

**SEC. 768.** The supreme court has power to proceed in all common law and chancery causes instituted before it, in which either of the parties reside without the District, in the same way that non-residents were proceeded against in the general court or in the supreme court of chancery in the State of Maryland on the third day of May, eighteen hundred and two. Common law and chancery causes.

*Ibid.*

3 May, 1802, c. 52, s. 1, v. 2, p. 193.

**SEC. 769.** The justices of the supreme court shall not hold original plea of any debt or damage in cases within the jurisdiction given to justices of the peace, which shall not exceed fifty dollars, exclusive of costs. Amount required to give jurisdiction.

*Ibid.*

3 March, 1823, c. 24, s. 6, v. 3, p. 744.

## Rules.

3 March, 1863, c. 91, s. 6, v. 12, p. 763.

SEC. 770. The supreme court, in general term, shall adopt such rules as it may think proper to regulate the time and manner of making appeals from the special term to the general term, and may prescribe the terms and conditions upon which such appeals may be made, and may also establish such other rules as it may deem necessary for regulating the practice of the court, and from time to time revise and alter such rules. It may also determine by rule what motions shall be heard at a special term, as non-enumerated motions, and what motions shall be heard at a general term in the first instance.

Justices may administer oaths to United States officers.

SEC. 771. All official oaths required by law to be taken by officers of the United States, may, in the District, be administered and certified by any one of the justices of the supreme court of the District.

26 June, 1848, c. 82, v. 9, p. 242.

## JURISDICTION—APPELLATE.

Appeals from special term.

SEC. 772. Any party aggrieved by any order, judgment, or decree, made or pronounced at any special term, may, if the same involve the merits of the action or proceeding, appeal therefrom to the general term of the supreme court, and upon such appeal the general term shall review such order, judgment, or decree, and affirm, reverse, or modify the same, as shall be just.

3 March, 1863, c. 91, s. 5, v. 12, p. 763.  
*Gitting vs. Burch*, 2 Cranch, C. C., 97.  
*Deneale's Executrix vs. Young*, 2 Cranch, C. C., 200.

Appeals from police court.

SEC. 773. Appeals from the police court shall be tried on the information filed in the court below, certified to supreme court, by a jury in attendance thereat, as though the case had originated therein, and the judgment in the supreme court shall be final in the case.

17 July, 1870, c. 133, ss. 3, 8, v. 16, pp. 154, 155.

Appeals from justices of the peace.

SEC. 774. In cases of appeal from a justice of the peace, as soon as the appellant shall have made the deposit for costs required by law, or obtained leave from one of the justices, or from the court, to prosecute his appeal without a deposit, the clerk shall docket the cause, and shall issue a summons for the appellee to appear at the next trial term of the court.

22 Feb., 1867, c. 64, s. 2, v. 14, p. 403.  
*Minifie vs. Duckworth*, 2 Cranch, C. C., 39; *Howard vs. United States*, 2 Cranch, C. C., 259; *Sherburne vs. Semmes*, 2 Cranch, C. C., 446; *Davidson vs. Burr*, 2 Cranch, C. C., 515; *Maddox vs. Stuart*, 2 Cranch, C. C., 523; *Coulme vs. Nairn*, 2 Cranch, C. C., 676; *Cross vs. Blanford*, 2 Cranch, C. C., 677; *Delany vs. Corporation*, 2 Cranch, C. C., 459; *McGunnigle vs. Corporation*, 2 Cranch, C. C., 460; *Butt vs. Stinger*, 4 Cranch, C. C., 252; *Ward vs. Corporation*, 4 Cranch, C. C., 232; *Chase vs. Smith*, 4 Cranch, C. C., 90; *Owner vs. Corporation*, 5 Cranch, C. C., 381; *Jeffers vs. Forrest*, 5 Cranch, C. C., 674.

Summary hearing, when.

SEC. 775. The supreme court shall in a summary way hear the allegations and proofs of both parties, and determine upon the same according to law and the equity and right of the matter, at the same term, without further continuance or delay, unless it shall appear to the court that further time ought to be given to the party applying for the same.

1 March, 1823, c. 24, s. 7, v. 3, p. 744.  
*Mead vs. Scott*, 1 Cranch, C. C., 401; *Ward vs. Corporation*, 4 Cranch, C. C., 232.

Trial by jury at election of parties.

SEC. 776. Either of the parties may demand a trial by jury, or leave the cause to be determined by the court, at their election

*Ibid.*  
When appellee fails to appear.

SEC. 777. In any case of appeal from the decision of a justice of the peace, where two summonses against the appellee shall be returned non est, or one attachment returned non est, and the appellee shall not appear, the court may proceed to hear and determine the case, in the same manner as if the appellee had regularly appeared.

*Ibid.*

When appellant fails to prosecute.

SEC. 778. If the appellant fails to prosecute his appeal, the appellee may, upon making the deposit for costs, have the cause docketed, and move for affirmance of the justice's judgment, or he may have a trial of the cause upon its merits.

22 Feb., 1867, c. 64, s. 3, v. 14, p. 403.  
When appeal shall not be dismissed.

SEC. 779. No appeal from the judgment of any justice of the peace to the supreme court shall be dismissed because the same had not been prayed to the term next after the rendition of such judgment, unless

the court shall be satisfied that the defendant had notice of such judgment at least ten days before the sitting of court.

SEC. 780. The supreme court, sitting in banc, shall have jurisdiction of and shall hear and determine all appeals from the decisions of the Commissioner of Patents, in accordance with the provisions of sections forty-nine hundred and eleven to section forty-nine hundred and fifteen, inclusive, of chapter one, Title LX, of the Revised Statutes, "PATENTS, TRADE-MARKS, AND COPYRIGHTS." [See R. S. U. S., p. 958. See R. S. U. S., § 699.]

1 March, 1823, c. 24, s. 7, v. 3, p. 744.

Appeals from Commissioner of Patents.

8 July, 1870, c. 230, secs. 43, 49, 50, 51, v. 16, p. 205.

PROCESS—MESNE.

SEC. 781. Writs and process issued out of the supreme court may be tested in the name of any justice of the court.

Teste of writs.

3 Mar., 1863, c. 91, s. 10, v. 12, p. 764. *Ex parte* Watkins, 7 Peters, 568.

SEC. 782. Writs of attachment and garnishment shall be issued by the clerk without any authority or warrant from any judge or justice, whenever the plaintiff, his agent or attorney, shall file in the clerk's office, whether at the commencement or during the pendency of the suit, an affidavit, supported by the testimony of one or more witnesses, showing the grounds upon which he bases his affidavit, and also setting forth that the plaintiff has a just right to recover against the defendant what he claims in the declaration, and also stating either, first, that the defendant is a non-resident of the District; or, second, that the defendant evades the service of ordinary process by concealing himself or by withdrawing from the District temporarily; or, third, that he has removed or is about to remove some of his property from the District, so as to defeat just demands against him; and shall also file his (the plaintiff's) undertaking, with sufficient surety, to be approved by the clerk, to make good all costs and damages which the defendant may sustain by reason of the wrongfulness of the attachment.

Writs of attachment and garnishment.

1 June, 1866, c. 103, s. 1, v. 14, p. 54.

SEC. 783. If the defendant, his agent or attorney, shall file an affidavit traversing the plaintiff's affidavit, the court shall determine whether the facts set forth in the plaintiff's affidavit are true, and whether there was just ground for issuing the writ of attachment; and if the facts do not sustain the affidavit, the court shall quash the writ of attachment or garnishment; and this issue may be tried by a judge at chambers on three days' notice.

How may be quashed.

Ibid.

SEC. 784. The thing attached shall not be discharged from the custody of the officer seizing it until the defendant shall deliver, either to the officer or to the clerk, to be filed in the cause, his undertaking, with sufficient surety, to satisfy and pay the final judgment of the court against him.

Discharge of attached property.

Ibid.

SEC. 785. If the defendant fail to execute such undertaking, the court may sell the thing attached whenever it is satisfied that it is in the interest of the parties it should be sold before final judgment.

Sale of attached property.

Ibid., p. 55.

Final judgment.

SEC. 786. In case the defendant be found liable to the plaintiff's claim, in whole or in part, the final judgment shall be that the plaintiff recover against the defendant and his sureties.

Ibid.

SEC. 787. Publication may be substituted for personal service of process upon any defendant who cannot be found, in suits for partition, divorce, by attachment, for the foreclosure of mortgages and deeds of trust, and for the enforcement of mechanics' liens and all other liens against real or personal property, and in all actions at law or in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

Notice by publication.

22 Feb., 1867, c. 64, s. 7, v. 14, p. 403.

SEC. 788. No order for the substitution of publication for personal service shall be made till a summons for the defendant shall have been issued and returned "not to be found."

Order of publication.

Ibid., s. 8, p. 404. Form.

SEC. 789. The order for publication shall be in the following or equivalent form:

Ibid.

"In the supreme court of the District of Columbia, the — day of —, 18—.

"A. B., plaintiff, }  
 v. } (At law,) (In equity,) No. —.  
 "C. D., defendant."

"On motion of the plaintiff, by Mr. —, his attorney, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default."

Process against foreign corporations.

22 Feb., 1867, c. 64, s. 11, v. 14, p. 404.

SEC. 790. In actions against foreign corporations doing business in the District, all process may be served on the agent of such corporation or person conducting its business, or, in case he is absent and cannot be found, by leaving a copy at the principal place of business in the District, and such service shall be effectual to bring the corporation before the court.

No person to be held to bail on action of debt or contract.

3 Feb., 1853, c. 40, v. 10, pp. 153, 154.

SEC. 791. No person shall be held to bail in the District in any action of debt, assumpsit, or other action founded on or arising out of any contract or agreement, or in any suit or proceeding in equity brought or prosecuted for enforcing the payment of any debt, or of any sum or sums of money due or claimed to be due by reason of any contract or agreement.

PROCESS—FINAL.

Validity of sales in certain cases.

22 Feb., 1867, c. 64, s. 9, v. 14, p. 404.

SEC. 792. All sales duly made in cases in which publication is substituted for personal service of process shall be good and valid, and vest any purchaser with a perfect title.

Decree confirming sale.

Ibid., s. 21, p. 406.

SEC. 793. In case of the sale of things, real or personal under a decree in equity, the decree confirming the sale shall divest the right, title, or interest sold out of the former owner, party to the suit, and vest it in the purchaser, without any conveyance by the officer or agent of the court conducting the sale; and the decree shall be notice to all the world of this transfer of title when a copy thereof shall be registered among the land-records of the District; but the court may, nevertheless, order its officer or agent to make a conveyance, if that mode be deemed preferable, in particular cases.

Capias ad satisfaciendum.

17 June, 1844, c. 100, v. 5, pp. 678, 679.

4 Feb., 1845, c. 2, v. 5, pp. 721, 722.

SEC. 794. If any plaintiff in a civil action, after judgment shall have been obtained by him, makes oath, according to law, that the defendant has conveyed away, lessened, or disposed of his property, rights, or credits, or is about to remove, or has removed, his property from the District, as the plaintiff believes, with intent thereby to hinder or delay the recovery or payment of his debts, the clerk of the court shall thereupon issue a capias ad satisfaciendum.

Proceedings upon arrest.

Ibid.

SEC. 795. Upon the arrest of any such defendant under a capias ad satisfaciendum, he may be brought by habeas corpus before the court, if in term time, and before one of the judges thereof in vacation, and may call upon the plaintiff to show cause why he, the defendant, shall not be discharged from imprisonment; and upon such notice, either party may demand a trial by jury; and thereupon the court or judge shall direct an issue or issues to be framed upon the affidavit so filed, and shall cause a jury to be impaneled and sworn to try such issue or issues, and if the finding of the jury shall be for the plaintiff, the defendant shall be thereupon remanded to prison.

Exemptions from arrest on civil process.

Ibid.

SEC. 796. Nothing in the two preceding sections shall be construed to authorize the custody or imprisonment of any female person on civil process, nor any non-resident for any debt contracted out of the District. [See § 791.]

Henry vs. Cornelius, 1 Cranch, C. C., 37; O'Neil vs. Hogan, 2 Cranch, C. C., 524.

Exemptions from property from distraint, &c.

SEC. 797. The following property, being the property of the head of a family or householder, shall be exempt from distraint, attachment, levy, and sale on execution or decree of any court in the District:

First. All wearing apparel belonging to all persons, and to all heads of families, being householders ;

Second. All beds, bedding, household furniture, stoves, cooking utensils, and so forth, not exceeding three hundred dollars in value ;

Third. Provisions for three month's support, whether provided or growing ;

Fourth. Fuel for three months ;

Fifth. Mechanic's tools and implements of the debtor's trade or business amounting to two hundred dollars in value, with two hundred dollar's worth of stock for carrying on the business of the debtor or his family ;

Sixth. The library and implements of a professional man or artist, to the value of three hundred dollars ;

Seventh. One horse, mule, or yoke of oxen ; one cart wagon, or dray, and harness for such team ;

Eighth. Farming utensils, with food for such team for three months, and if the debtor be a farmer, any other farming tools of the value of one hundred dollars ;

Ninth. All family pictures, and all the family library not exceeding in value four hundred dollars ;

Tenth. One cow, one swine, six sheep ; and these exemptions shall be valid when the property is in transitu, the same as if at rest ; but no property named and exempted in this section shall be exempted from attachment or execution for any debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds, and bedding, and household furniture and provisions, for the debtor and family. [See §§ 603, 982, 1286.]

SEC. 798. No deed of trust, bill of sale, or mortgage upon any exempted articles, shall be binding or valid unless signed by the wife of the debtor, if he be married and living with his wife.

SEC. 799. The exemptions named in section seven hundred and ninety-seven shall not interfere with the foreclosure of any mortgage or deed of trust executed prior to February fifth, eighteen hundred and sixty-seven.

5 Feb., 1867, c. 50,  
v. 14, pp. 389, 390.

Conveyance of  
exempted articles.

Ibid.  
Prior deeds.

Ibid.

PRACTICE—CIVIL.

SEC. 800. Non-enumerated motions in all suits and proceedings at law and in equity shall first be heard and determined at special terms. Suits in equity, not triable by jury, shall also be heard and determined at special terms. But the justice holding such special term may, in his discretion, order any such motion or suit to be heard, in the first instance, at a general term.

SEC. 801. All issues of fact triable by a jury or by the court shall be tried before a single justice.

SEC. 802. Issues of law may be tried at a special term. At any time after issue, and at least ten days before the sitting of the court, either party may give notice of trial. The party giving the notice shall furnish the clerk, at least four days before the sitting of the court, with a note of the issue, containing the title of the action, the names of the attorneys, and the time when the last pleading was served ; and the clerk shall thereupon enter the cause upon a calendar, according to the date of the issue.

SEC. 803. If upon the trial of a cause, an exception be taken, it may be reduced to writing at the time, or it may be entered on the minutes of the justice, and afterward settled in such manner as may be provided by the rules of the court, and then stated in writing in a case or bill of exceptions, with so much of the evidence as may be material to the questions to be raised, but such case or bill of exceptions need not be sealed or signed.

SEC. 804. The justice who tries the cause may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and

Motions and suits  
at special terms.

3 March, 1863, c.  
91, s. 5, v. 12, p. 763.

Issues of fact,  
how triable.

Ibid., s. 7.

Issues at law,  
how tried.

Ibid., p. 764.

Exceptions.

Ibid., s. 8.

New trials.

Ibid.

*Brooke vs. Peyton*, 1 Cranch, C. C., 128; *Ingle vs. Collard*, 1 Cranch, C. C., 152; *Brent vs. Coyle*, 2 Cranch, C. C., 348; *United States vs. Wood*, Wash. Law Rep., v. 1, No. 25, p. 142.

**Appeal to general term.** SEC. 805. When such motion is made and heard upon the minutes, an appeal to the general term may be taken from the decision, in which case a bill of exceptions or case shall be settled in the usual manner.

3 March, 1863, c. 91, s. 8, v. 12, p. 764.  
*Swann vs. Bowie*, 2 Cranch, C. C., 221; *Turner vs. Foxall*, 2 Cranch, C. C., 324; *Lloyd vs. Scott*, 4 Cranch, C. C., 206.

**Motion for new trial to be heard at general term.** SEC. 806. A motion for a new trial on a case or bill of exceptions, and an application for judgment on a special verdict or a verdict taken subject to the opinion of the court, shall be heard in the first instance at a general term.

*Ibid.*, s. 9.  
*Bank of Metropolis vs. Walker*, 2 Cranch, C. C., 361.

**Trials when another term intervenes.** SEC. 807. When, at any term of the court, a jury shall be impaneled to try any cause or any issue or issues joined in any cause, and it shall happen that no verdict shall be found, nor the jury otherwise discharged before the day appointed by law for the commencement of the next succeeding term, the court shall proceed with the trial by the same jury in every respect as if such term had not commenced; and all subsequent proceedings to final judgment, if such judgment shall be rendered, shall be entered and have legal effect and operation as of the term at which the jury shall have been impaneled.

16 Feb., 1853, c. 76, v. 10, p. 160.

**Proceedings to enforce a lien.** SEC. 808. The proceeding to enforce any lien shall be by bill or petition in equity, and the decree, besides subjecting the thing upon which the lien has attached to the satisfaction of the plaintiff's demand against the defendant, shall adjudge that the plaintiff recover his demand against the defendant, and that he may have execution thereof as at law.

22 Feb., 1867, c. 64, s. 10, v. 14, p. 404.

**Fictions in pleadings abolished.** SEC. 809. All fictions in the pleadings in the action of ejectment within the District are abolished; and all actions for the recovery of real estate shall be commenced in the name of the real party in interest, and against the party claiming to own or be possessed thereof.

1 June, 1870, c. 115, s. 1, v. 16, p. 146.  
*McCormick's Lessee vs. Magruder*, 2 Cranch, C. C., 227; *Lynn vs. Hull*, 2 Cranch, C. C., 52; *Whetcroft vs. Burford*, 2 Cranch, C. C., 96; *Waters vs. Bassard*, 2 Cranch, C. C., 226; *Deneale vs. Young*, 2 Cranch, C. C., 418; *Janney vs. Smith*, 2 Cranch, C. C., 499.

**Set-offs.** SEC. 810. Mutual debts between the parties to an action, or between the testator or intestate of both parties, or either party, may be set off against each other by plea in bar, whether the said debts be of the same or a different nature; and if either debt arose by reason of a penalty, the exact sum to be set off shall be stated in the plea.

22 Feb., 1867, c. 64, s. 5, v. 14, p. 403.

**Form of plea of set-off.** SEC. 811. The plea of set-off may be: "That the plaintiff, at the commencement of the suit, was, and still is, indebted to the sum of — dollars, for —, as appears by the particulars of said debt, hereunto annexed; and he is willing that the same may be set off against the plaintiff's demand."

*Ibid.*, s. 6.

**Judgment for balance due.** SEC. 812. And upon the trial of an issue upon a plea of set-off, judgment shall be for the balance found due, whether to the plaintiff or defendant, with costs.

*Ibid.*

**Mutual judgments.** SEC. 813. Mutual judgments recovered in the court may be set off against each other, on motion of either party; and the court shall award execution for the balance found due against the party chargeable therewith.

*Ibid.*

**Replevin; form of declaration.** SEC. 814. The declaration in replevin shall be in the following or equivalent form: "The plaintiff sues the defendant for (wrongly taking and detaining) (unjustly detaining) his, said plaintiff's, goods and chattels, to wit: (describe them) of the value of \$—. And the plaintiff claims that the same be taken from the defendant and delivered to him; or, if they are eloiigned, that he may have judgment of their said value, and all mesne profits and damages, which he estimates at \$—, besides costs."

22 Feb., 1867, c. 64, s. 13, v. 14, p. 404.



SEC. 815. At the time of filing the declaration in replevin, the plaintiff, his agent or attorney, shall file an affidavit, sworn to before the clerk, stating—

Plaintiff's affidavit, to state what.

First. That, according to affiant's information and belief, the plaintiff is entitled to recover possession of chattels proposed to be replevied, being the same described in the declaration ;

22 Feb., 1867, c. 64, s. 13, v. 14, pp. 404, 405.

Second. That the defendant has seized and detains, or detains the same ;

Third. That said chattels were not subject to such seizure or detention, and were not taken upon any writ of replevin.

SEC. 816. The plaintiff shall, at the same time, enter into an undertaking with surety, approved by the clerk, to abide by and perform the judgment of the court in the premises.

Plaintiff to give security.

SEC. 817. If the officer's return of the writ of replevin be, that he has served the defendant with copies of the declaration, notice to plead and summons, but that he could not get possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the same and damages for detention ; or he may renew the writ in order to get possession of the goods and chattels themselves.

Ibid., p. 405.  
Officer's return; proceedings.

SEC. 818. If the officer's return be, that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the court may order that the defendant appear to the action by some fixed day ; and of this order the plaintiff shall cause notice to be given by publication in some newspaper of the District at least three times, the first of which shall be at least twenty days before the day fixed for the defendant's appearance.

Ibid., s. 14.

When defendant cannot be found; order and notice.

Ibid.

SEC. 819. If the defendant fails to appear, the court may proceed as in case of default after personal service.

Proceedings in default.

Ibid.

SEC. 820. If the defendant appear, he may plead not guilty, in which case all special matters of defense may be given in evidence, or he may plead specially.

Appearance of plaintiff; plea.

Ibid., s. 15.

SEC. 821. Whether the defendant plead, and the issue thereon joined is found against him ; or his plea is held bad on demurrer ; or he make default after personal service, or after publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where there is no issue of fact ; and the damages shall be the full value of the goods, if eloiigned by the defendant, including, in every case, the loss sustained by the plaintiff by reason of the detention ; and judgment shall pass for the plaintiff accordingly.

Plaintiff's damages.

Ibid., s. 16.

SEC. 822. If the issue be found for the defendant, or the plaintiff dismiss or fail to prosecute his suit, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages, or on failure, that the defendant recover against the plaintiff and his surety the damages by him sustained, to be assessed by the jury trying the issue ; or, where the plaintiff dismisses or fails to prosecute his suit, by the jury of inquest.

When judgment is for defendant.

Ibid., s. 17.

SEC. 823. If the defendant has eloiigned the things sued for, the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things.

Damages when things eloiigned.

Ibid., s. 18.

SEC. 824. The judgment in such cases shall be that the plaintiff recover against the defendant the value of the goods as found, to be discharged by the return of the things, with damages for detention, which the jury shall also assess.

Judgment; damages for detention.

Ibid.

Carbery, 2 Cranch, C. C., 39 ; Wood vs. May, 3

Thompson vs. Cranch, C. C., 172.

SEC. 825. Where a suit is brought upon an open account, verified by the plaintiff's or his agent's affidavit, that the amount claimed by the plaintiff is justly payable by the defendant to the plaintiff, and the defendant fails to defend the suit, the plaintiff may have judgment, final by default for the amount, with interest from the day specified in the declaration, without an inquiry of damages.

Judgment by default in suits on open account.

Ibid., s. 19.

Verification of authority of officer taking affidavit.

22 Feb., 1867, c. 64, s. 19, v. 14, p. 405.

Where money is payable by joint obligors; proceedings.

Ibid., s. 20, pp. 405, 406.

Plaintiff not entitled to costs, when.

Ibid., s. 22, p. 406. Goddard vs. Davis, 1 Cranch, C. C.

Interest on judgments.

24 June, 1812, c. 106, s. 6, v. 2, p. 756; Killingly vs. Taylor, 1 Cranch, C. C., 99; McDonald vs. White, 1 Cranch, C. C., 149.

Injunction upon judgments; damages on dissolution.

Ibid., s. 7. Love vs. Fendall's Trustee, 1 Cranch, C. C., 34; Mason vs. Muncaster, 3 Cranch, C. C., 403.

Damages for satisfaction of interest in case of a forthcoming bond.

Ibid., pp. 756, 757. Sutton vs. Mandeville, 1 Cranch, C. C., 32; Stevens vs. Lloyd, 1 Cranch, C. C., 141; Thomas vs. Brent, 1 Cranch, C. C., 161.

When the court may direct none or partial damages.

Ibid. Petition for change of name.

20 Dec., 1867, c. 2, s. 2, v. 15, p. 33. Notice.

Ibid.

Name changed.

Ibid.

SEC. 826. If the affidavit of the plaintiff or his agent be made before an officer, of whose authority to administer oaths the court cannot take notice, his authority must be verified by the certificate under official seal, if he have one, of the officer having authority to give such certificate.

SEC. 827. Where money is payable by two or more persons jointly or severally, as by joint obligors, covenantors, makers, drawers, or indorsers, one action may be sustained and judgment recovered against all or any of the parties by whom the money is payable, at the option of the plaintiff. But an action against one or some of the parties by whom the money is payable may, while the litigation therein continues, be pleaded in bar of another action against another or others of said parties.

SEC. 828. If the declaration state a cause of action of which the court has jurisdiction, but the verdict finds the money payable by the defendant to the plaintiff to be less than the lowest sum of which the court has jurisdiction, the plaintiff shall have judgment for the amount found due to him from the defendant, but without costs.

SEC. 829. Upon all judgments rendered on the common-law side of the court in actions founded on contracts, interest at the rate of six per centum per annum shall be awarded on the principal sum due until the judgment shall be satisfied, and the amount which is to bear interest and the time from which it is to be paid shall be ascertained by the verdict of the jury sworn in the cause.

SEC. 830. When an injunction is obtained to stay proceedings on any judgment rendered for money, and such injunction shall be dissolved, wholly or in part, damages, at the rate of ten per centum per annum from the time the injunction shall be awarded until dissolution, shall be paid by the party on whose behalf such injunction was obtained on such sum as appears to be due, including costs, and execution on the judgment enjoined shall be issued for the same.

SEC. 831. In cases where a forthcoming bond shall have been executed by the complainant, and no judgment shall have been rendered thereupon, the court in which execution shall be awarded shall direct the damages to be included in the judgment, and such damages shall in all cases be in full satisfaction of interest for the time for which they shall be allowed.

SEC. 832. When the injunction is granted to obtain a discovery, or any part of the judgment shall remain enjoined, the court may, if it appear just, direct that such damages shall not be paid, or only such proportion thereof as they may deem expedient.

SEC. 833. Any person being a resident of the District, and desirous to have his name changed, may file a petition in the supreme court setting forth the reasons therefor, and also the name desired to be assumed.

SEC. 834. Notice of the filing of such petition, containing the substance and prayer thereof, shall be published for three consecutive weeks in some newspaper in general circulation published in the District, prior to the hearing of the petition.

SEC. 835. The court, or the justice holding a civil term thereof, on proof of such notice, and upon such showing as may be deemed satisfactory, may change the name of the applicant according to the prayer of the petition.

#### PRACTICE—CRIMINAL.

Form of indictment.

3 March, 1801, c. 24, s. 2, v. 2, p. 115. United States vs. Peacock, 1 Cranch, C. C., 215.

SEC. 836. All indictments shall run in the name of the United States, and conclude, against the peace and government thereof.

SEC. 837. All fines, penalties, and forfeitures accruing under the laws of the State of Maryland, which, by adoption, have become the laws of the District, shall be recovered with costs, by indictment or information, in the name of the United States, or by action of debt, in the name of the United States and of the informer; one-half of which fine shall accrue to the United States, and the other half to the informer; and such fines shall be collected by or paid to the marshal, and one-half thereof shall be by him paid over to the District of Columbia, and the other half to the informer; and the marshal shall have the same power regarding their collection, and be subject to the same rules and regulations as to the payment thereof, as the sheriffs of the State of Maryland are subject to in relation to the same.

SEC. 838. On the trial of any person charged with a crime, the punishment whereof may be confinement in the penitentiary or District jail, the defendant shall be entitled to four peremptory challenges of jurors.

SEC. 839. In all criminal trials the supreme court, or the judge trying the case, may allow such number of witnesses on behalf of the defendant as may appear necessary; the fees thereof, with the costs of service, to be paid in the same manner as Government witnesses are paid.

SEC. 840. In addition to the oath now prescribed by law to be administered to the grand jury in the District, they shall be sworn faithfully and impartially to inquire into and true presentment make of all offenses against the laws prohibiting dueling. [See §§ 1164-1168.]

SEC. 841. The court shall also give in charge to the grand jury at the commencement of each term next preceding an election in the District, the provisions of section one hundred and four, respecting interference with an elector in the exercise of the elective franchise. [See §§ 98-108.]

SEC. 842. In all prosecutions or indictments for libel instituted in the District, the truth thereof may be given in evidence under the general issue as a justification of the alleged libel; and if it appear that the matter charged as libellous was true, and was written or published with good motives and for justifiable ends, the defendant shall be acquitted.

SEC. 843. In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the chief-justice of the supreme court shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authority of the several States are required to do by the provisions of sections fifty-two hundred and seventy-eight and fifty-two hundred and seventy-nine, Title LXVI, of the Revised Statutes, "EXTRADITION;" and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in such delivery. [See R. S. U. S., pp. 1027-1028.]

SEC. 844. The President of the United States has power to grant remissions of the forfeitures of all recognizances acknowledged and taken before any court, judge, justice of the peace, or other magistrate within the District, either in the course of any criminal prosecution, or for surety of the peace.

SEC. 845. To enable any person convicted by the judgment of the court, to apply for a writ of error, in all cases when the judgment shall be death, or confinement in the penitentiary, the court shall, on application of the party accused, postpone the final execution thereof to a reasonable time beyond the next term of the court, not exceeding in any case thirty days after the end of such term.

REMOVAL OF CAUSES TO THE SUPREME COURT OF THE UNITED STATES.

SEC. 846. Any final judgment, order, or decree of the supreme court of the District may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, in

Recovery and distribution of certain fines, &c.

3 March, 1801, c. 24, s. 2, v. 2, p. 115.  
Levy Court vs. Ringgold, 5 Peters, 451

Challenge of jurors.

22 Feb., 1867, c. 65, s. 11, v. 14, p. 407.

Witnesses for defendant in criminal trials.

Ibid., s. 12, pp. 407, 408.

Special oath of grand jury.

20 Feb., 1839, c. 30, s. 7, v. 5, p. 319.

Special charge to grand jury.

8 Jan., 1867, c. 6, s. 4, v. 14, p. 375.

Libels; truth may be given in evidence.

25 Feb., 1865, c. 58, v. 13, p. 439.

Fugitives from justice.

3 March., 1801, c. 24, s. 6, v. 2, p. 116.

Remission of forfeitures by the President.

13 June, 1812, c. 100, v. 2, p. 752.

When execution of sentence may be postponed.

7 July, 1838, c. 192, s. 6, v. 5, p. 307.

Writs of error and appeals.

3 March, 1863, c. 91, s. 11, v. 12, p. 764. the same cases and in like manner as provided by law in reference to the final judgments, orders, and decrees of the circuit courts of the

United States.  
*Ross vs. Triplett*, 3 Wheat., p. 600; *Smith vs. Mason*, 14 Wall., p. 419; *United States vs. Hooe*, 1 Cranch, 317; *Young vs. Bank of Alexandria*, 4 Cranch, 384; *Custis vs. Georgetown and Alex. T. Co.*, 6 Cranch, 233; *Columbian Insurance Company vs. Wheelright*, 7 Wheat., 534; *United States vs. More*, 3 Cranch, 159; *Carter vs. Cutting*, 8 Cranch, 251; *Nicholls vs. Hodges*, 1 Peters, 562; *Wise vs. Columbian Turnpike Co.*, 7 Cranch, 276; *Scott vs. Lunt*, 6 Peters, 349; *Lee vs. Lee*, 8 Peters, 44; *Thompson et al. vs. Voss*, 1 Cranch, C. C., 108; *United States vs. Hooe & Co.*, 1 Cranch, C. C., 116; *Moore et al. vs. Dunlop*, 1 Cranch, C. C., 180; *Grundy vs. Young*, 1 Cranch, C. C., 443; *Ex parte Negro Ben*, 1 Cranch, C. C., 532; *Marsteller vs. McClean*, 2 Cranch, C. C., 8; *Renner vs. Bank of Columbia*, 2 Cranch, C. C., 310; *United States vs. Columbian Ins. Co.*, 2 Cranch, C. C., 266.

Amount required for removal.

2 April, 1816, c. 39, s. 1, v. 3, p. 261.

Removals for a less amount in particular cases.

*Ibid.*, s. 2.

Effect of writ in such cases.

*Ibid.*, s. 3.

No supersedeas except, &c.

22 Feb., 1867, c. 64, s. 4, v. 14, p. 403.

SEC. 847. No cause shall be removed from the supreme court of the District to the Supreme Court of the United States, by appeal or writ of error, unless the matter in dispute in such cause shall be of the value of one thousand dollars or upward, exclusive of costs, except in the cases provided for in the following section. [See R. S. U. S., § 699.]

SEC. 848. When any person, or body politic or corporate, shall think him, or themselves, aggrieved by any final judgment, order, or decree, of the supreme court of the District, where the matter in dispute, exclusive of costs, shall be of the value of one hundred dollars, and of less value than one thousand dollars, and shall have prayed an appeal, or shall desire to sue out a writ of error to the Supreme Court of the United States, such person, or body politic or corporate, may exhibit a petition, in writing, accompanied by a copy of the proceedings complained of, and an assignment of the errors relied on, to any judge of the Supreme Court of the United States, who, if he should be of opinion that such errors, or any of them, involve questions of law of such extensive interest and operation as to render the final decision of them by the Supreme Court of the United States desirable, may thereupon, at his discretion, and upon the terms and conditions prescribed by law, by his order, to be directed to the clerk of the supreme court of the District, direct such appeal to be allowed, or writ of error to be issued; which shall be done accordingly.

[See R. S. U. S., §§ 705, 706.]

SEC. 849. When any appeal or writ of error shall have been directed in the manner prescribed by the preceding section, and the order thereon of the judge of the Supreme Court of the United States shall have been filed in the office of the clerk of the supreme court of the District, within thirty days after the end of the term at which the judgment, order, or decree, to be affected by such writ of error or appeal, shall have been rendered or made, such writ of error or appeal shall operate as a supersedeas of all proceedings under such judgment, order, or decree.

SEC. 850. There shall be no supersedeas or stay of execution of the judgments of the supreme court of the District, otherwise than by injunction, or upon proceedings in error to the Supreme Court of the United States.

## CHAPTER TWENTY-FOUR.

### JURORS.

Sec.

- 851. Lists of jurors.
- 852. Names, how selected.
- 853. How placed in jury-box.
- 854. Custody of jury-box.
- 855. Drawing jurors.
- 856. Jurors for criminal term.
- 857. Jurors in capital cases.
- 858. Jurors for circuit court.
- 859. Additional names, when drawn.
- 860. Rescaling jury-box.

Sec.

- 861. Names not to be again put in jury-box, when.
- 862. If jurors do not attend.
- 863. When panel is incomplete.
- 864. How summoned when all names have been drawn.
- 865. Vacancies, how filled.
- 866. Notifications.
- 867. How served.
- 868. Marshal's return.